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Supreme Court of the United States

OCTOBER TERM, 1954

No. 22

SAMUEL BERMAN AND SOLOMON H. FELDMAN, EXECUTORS OF THE ESTATE OF MAX R. MORRIS, DECEASED, APPELLANTS,

vs.

ANDREW PARKER, JOHN A. REMON, JAMES E. COLLIFLOWER, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

FILED JANUARY 27, 1954

PROBABLE JURISDICTION NOTED MARCH 8, 1954

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INDEX

	Original	Print
Record from the U.S.D.C. for the District of Columbia--		
Caption (omitted in printing)	A	
Complaint	1	1
Motion to consolidate (omitted in printing)	8	
Application for designation of three judge court	10	5
Designation of judges to serve on three judge court	11	6
Motion of defendants to dissolve three judge court	12	7
Order granting motion to consolidate (omitted in printing)	13	

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JULY 30, 1954.

—6517

	Original	Print
Record from the U.S.D.C. for the District of Columbia—Continued		
Motion of defendants to dismiss or in in the alternative for summary judgment	14	8
Exhibit 1—Affidavit of Carl R. Nolte	16	9
Exhibit 2—Affidavit of Daniel L. Seckinger	18	10
Table of Statistics showing health conditions in Census Tract #60	21	12
Map showing Census Tracts for the District of Columbia	22	14
Exhibit 3—Affidavit of John R. Searles, Jr.	23	15
Exhibit A—Public Law 592—79th Congress—Redevelopment Act of 1945 (omitted in printing)	33	
Exhibit C—Public Law 171—81st Congress—Housing Act of 1949 (omitted in printing)	56	
Exhibit G—Agreement dated April 10, 1953 between the Board of Commissioners and the District of Columbia Redevelopment Land Agency	92	24
Exhibit H—Proposals printed in daily newspapers of District of Columbia, November 17, 1952	101	31
Exhibit I—Requests for proposals, etc.	102	33
Exhibit K—Resolution of D.C. Redevelopment Land Agency dated April 29, 1953	112	40
Order denying motion to dissolve three judge court	113	41
Motion of defendant for leave to file supplemental affidavit of Daniel L. Seckinger	114	41
Memorandum of points and authorities in support of motion for leave to file supplemental affidavit	116	42
Exhibit 4—Supplemental affidavit of Daniel L. Seckinger to motion to dismiss	117	43
Statistical Table—Resident death rates for selected causes, etc.	118	44
Opposition to motion of defendants to dismiss or in the alternative for summary judgment and cross-claim for summary judgment	119	45
Memorandum of points and authorities in opposition to motion of defendants to dismiss or in the alternative for summary judgment and in support of motion of plaintiff for summary judgment (omitted in printing)	120	

	Original	Print
Record from the U.S.D.C. for the District of Columbia—Continued		
Memorandum of points and authorities in opposition to plaintiffs' motion for summary judgment (omitted in printing)	126	
Opinion of the Supreme Court of Ohio in The State, ex rel. Bruestle, City Solicitor v. Rich, Mayor, et al. (omitted in printing)	132	
Article from Washington & Lee Law Review—Recent Slum Clearance and Urban Redevelopment Laws by Philip H. Hill (omitted in printing)	149	
Opinion, Prettyman, J.	166	45
Order granting motion to dismiss	209	83
Order substituting party, etc. (omitted in printing)	213	
Petition for appeal	215	84
Order allowing appeal	216	84
Citation on appeal (omitted in printing)	217	
Assignment of errors and prayer for reversal	219	85
Notice of appeal (omitted in printing)	247	
Admission of service (omitted in printing)	249	
Praecipe (omitted in printing)	251	
Counter-praecipe (omitted in printing)	253	
Clerk's certificate (omitted in printing)	255	
Statement of points to be relied upon	256	86
Designation of parts of record to be printed (omitted in printing)	256	
Appellee's counter-designation of parts of the record to be printed (omitted in printing)	260	
Order of substitution	263a	87
Stipulation as to the printing of the record	264	87
Order noting probable jurisdiction	268	89

[fol. a] [Caption omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

[fol. 1] [File endorsement omitted]

Civil Action No. 476–53

MAX R. MORRIS, 320 Decatur Street, N. W., Washington, D. C., Plaintiff,

vs.

MARK LANSBURGH, 499 Pennsylvania Avenue, N. W., Washington, D. C.; John A. Remon, 499 Pennsylvania Avenue, N. W., Washington, D. C.; James E. Colliflower, 499 Pennsylvania Avenue, N. W., Washington, D. C.; Richard R. Atkinson, 499 Pennsylvania Avenue, N. W., Washington, D. C.; Francis F. Healy, 499 Pennsylvania Avenue, N. W., Washington, D. C., Members Comprising the District of Columbia Redevelopment Land Agency, and The District of Columbia Redevelopment Land Agency, a Corporation, and Joseph D. Lohman, 18th and C Streets, N. W., Washington, D. C.; John A. Remon, 18th and C Streets, N. W., Washington, D. C.; Conrad L. Wirth, 18th and C Streets, N. W., Washington, D. C.; Louis W. Prentiss, 18th and C Streets, N. W., Washington, D. C.; Samuel D. Sturgis, 18th and C Streets, N. W., Washington, D. C.; Francis Case, 18th and C Streets, N. W., Washington, [fol. 2] D. C.; Sid Simpson, 18th and C Streets, N. W., Washington, D. C.; W. E. Reynolds, 18th and C Streets, N. W., Washington, D. C.; Thomas H. MacDonald, 18th and C Streets, N. W., Washington, D. C.; Frederick Bigger, 18th and C Streets, N. W., Washington, D. C.; Albert P. Greenfelder, 18th and C Streets, N. W., Washington, D. C.; Hilyard R. Robinson, 18th and C Streets, N. W., Washington, D. C., Members Comprising the National Capital Park and Planning Commission, and F. Joseph Donohue, 14th and E Streets, N. W., Washington, D. C.; Renah F. Camalier, 14th and E Streets, N. W., Washington, D. C.; Louis W. Prentiss, 14th and E Streets,

N. W., Washington, D. C., Members Comprising the Board of Commissioners of the District of Columbia, Defendants

COMPLAINT FOR TEMPORARY AND PERMANENT INJUNCTION, MANDATORY INJUNCTION, AND DECLARATORY JUDGMENT—Filed February 2, 1953

1. This Court has jurisdiction under Sections 11-305 and 11-306, District of Columbia Code, 1951 Edition.

2. Plaintiff, Max R. Morris is a citizen of the United States, a resident of the District of Columbia and the owner of Lot 812, Square 587 in the District of Columbia, the same being premises 712 Fourth Street, S. W., which said property is zoned for, and is in commercial use, being improved [fol. 3] by a department store and is not in use as a dwelling, residence, house or habitation.

3. Defendants, Mark Lansburgh, John A. Remon, James E. Colliflower, Richard R. Atkinson and Francis F. Healy, are sued herein in their official capacities as the members comprising the District of Columbia Redevelopment Land Agency, and the defendant, District of Columbia Redevelopment Land Agency, is sued in its own right as a body corporate, and all are hereinafter referred to as the Redevelopment Land Agency.

4. Defendants, Joseph D. Lohman, John A. Remon, Conrad L. Wirth, Louis W. Prentiss, Samuel D. Sturgis, Francis Case, Sid Simpson, W. E. Reynolds, Thomas H. MacDonald, Frederick Bigger, Albert P. Greenfelder and Hilyard R. Robinson, are sued herein in their official capacities as members comprising the National Capital Park and Planning Commission, and are hereinafter referred to as the Park and Planning Commission.

5. Defendants, F. Joseph Donohue, Renah F. Camalier and Louis W. Prentiss, are sued herein in their official capacities as members comprising the Board of Commissioners of the District of Columbia, hereinafter referred to as the Commissioners of the District.

6. On or about October 24, 1952, the defendants, the Park and Planning Commission, purporting to act under the Act of Congress of August 2, 1946, 60 Stat. 790 (The District of Columbia Land Redevelopment Act), adopted a plan

known as "Redevelopment Plan for Southwest Redevelopment Project Area B", calling for the taking of plaintiff's commercial property without due process of law through the guise of the processes of eminent domain or otherwise for a private use, to wit, its lease or sale to private individuals, partnerships, ventures or corporations for development and use as private commercial property.

7. On or about December 30, 1952, the defendants, the Commissioners of the District, approved the aforementioned Plan for the taking of plaintiff's property for a private use and without due process of law.

[fol. 4] 8. The defendants, Redevelopment Land Agency, their agents and employees, are now proceeding or are threatening immediately to proceed through the guise of eminent domain or otherwise to seize and take the property of the plaintiff for a private use, above recited, and without due process of law, to the immediate and irreparable damage of the plaintiff, and will so proceed unless restrained or enjoined by this Court.

9. The Act of Congress of August 2, 1946, 60 Stat. 790, known as The District of Columbia Land Redevelopment Act, under which defendants are acting or are purporting to act, authorizes and orders the taking of private property not for a public but for a private use, to wit, the sale or lease of such property to private parties or corporations for their own development and private use, amounts to a taking without due process of law and is for that reason unconstitutional.

10. The administrative action of the Park and Planning Commission, the Commissioners of the District and the Redevelopment Land Agency, above recited, authorizes and orders, through the guise of eminent domain, the taking of plaintiff's private commercial property for a private use, to wit, the sale and lease of such property to private parties or corporations for their own development and private commercial use, amounts to a taking without due process of law and is for that reason unconstitutional.

11. By way of alternative, plaintiff states that the proposed and threatened taking of plaintiff's property violates the rights of the plaintiff under the Fifth Amendment of the Constitution of the United States in that the said taking,

although under the guise of official action, is not authoriz by, but is in violation of the Act of Congress cited abo in the following particulars:

(a) The statute under which defendants are proceedi to take the property of plaintiff authorizes only the taking [fol. 5] land used for housing, dwelling, habitation or re dence purposes. But the property of the plaintiff is not use for those purposes, but is in commercial use, to wit, as a department store. Hence, the taking is without d process of law, and the plan of the Park and Planning Co mission and the approval by the Commissioners of the D trict, are as respects the property of the plaintiff not a thorized by law, and are null and void.

(b) The proposed and threatened taking of plaintif property is not for a public use, as defined by the said st ute, but is, to the contrary, for a private use, to wit, the lea or sale of plaintiff's commercial property to a private par or corporation for its private development and use as co mercial property, and the plan, approval and taking order are, therefore, as regards plaintiff's property, null a void.

Wherefore, the premises considered, the plaintiff r quests that this Honorable Court:

1. Enjoin defendants, the Redevelopment Land Agenc during the pendency of this action and permanently, fro taking or proceeding to take the property of your plai tiff, known as Lot 812, Square 587, premises 712 Four Street, S. W., Washington, D. C., through the processes eminent domain or otherwise.

2. Enter a judgment declaring that the Act of Congre of the United States of August 2, 1946, 60 Stat. 790, know as The District of Columbia Land Redevelopment Act unconstitutional.

3. Enter a judgment declaring that the Act of Congre of the United States of August 2, 1946, 60 Stat. 790, know as The District of Columbia Land Redevelopment Act, implemented by Redevelopment Plan B of the Park an Planning Commission and by the approval of the said Pla B by the Commissioners of the District, is unconstitution as to this plaintiff.

4. Enter a judgment declaring that Redevelopment Plan B, insofar as it applies to the plaintiff's property, is uncon-
[fol. 6] stitutional, without authority in law and null and void.

5. Order and direct that the defendants, the Park and Planning Commission and the Commissioners of the District correct and amend Redevelopment Plan B by deleting therefrom reference to and provisions for the taking and "redevelopment" of Lot 812, Square 587, the property of the plaintiff, and

6. For such other and further relief as to this Court may seem just and proper.

James C. Toomey, Toomey & Mehler, 428 Barr Building, Washington 6, D. C., Attorneys for Plaintiff.

[fols. 7-9] *Duly sworn to by Max Morris. Jurat omitted in printing.*

[fol. 10] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

[Title omitted]

APPLICATION FOR DESIGNATION OF THREE JUDGE COURT—
Filed March 3, 1953

To The Chief Judge or, in his absence, the Presiding Judge of the United States Court of Appeals for the District of Columbia Circuit, Washington, D. C.:

Plaintiff has filed a complaint seeking an injunction, together with declaratory relief, to restrain the enforcement of the provisions of the Act of Congress of August 2nd, 1946, 60 Stat. 790, known as the District of Columbia Land Redevelopment Act, on the ground that the said Act is repugnant to the Constitution of the United States. Application is hereby made to the Chief Judge, or in his absence, the Presiding Judge of the United States Court of Appeals for the District of Columbia Circuit, to designate a Three Judge Court to hear the case, as provided by Section 2284 of Title 28 of the United States Code.

It appears from the pleadings that the issues in this case are identical with the issues in the case of Schneider v. District of Columbia, et al., Civil Action 5791-52. In that case Judges Prettyman, Keech and Curran have been designated to sit. The plaintiff in the instant case has filed a motion to consolidate Morris v. District of Columbia Redevelopment Land Agency, a corporation, et al., Civil Action 476-53 with Schneider v. Distfict of Columbia, a Municipal Corporation, et al., Civil Action 5791-52.

Edward M. Curran, Judge.

[fol. 11] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

[Title omitted]

DESIGNATION OF JUDGES TO SERVE ON THREE-JUDGE COURT—Filed March 3, 1953

The Honorable Edward M. Curran, United States District Judge for the District of Columbia, having notified me that the plaintiff in the above-entitled action seeks an injunction to restrain the enforcement of the provisions of the Act of August 2, 1946, 60 Stat. 790, known as the District of Columbia Redevelopment Act of 1945, on the ground that said Act is repugnant to the Constitution of the United States,

Now, therefore, pursuant to the provisions of Section 2284 of Title 28 of the United States Code, I hereby designate the Honorable E. Barrett Prettyman, United States Circuit Judge for the District of Columbia Circuit, and the Honorable Richmond B. Keech, United States District Judge for the District of Columbia, to serve with the Honorable Edward M. Curran, United States District Judge for the District of Columbia, as members of the Court to hear and determine the above-entitled action.

Dated March 3, 1953.

Henry W. Edgerton, Acting Chief Judge, United States Court of Appeals for the District of Columbia Circuit.

[fols. 12-13] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

Civil Action No. 5791-'52

GOLDIE SCHNEIDER, Plaintiff,

v.

DISTRICT OF COLUMBIA, et al., Defendants

Civil Action No. 476-'53

MAX R. MORRIS, Plaintiff,

v.

MARK LANSBURGH, et al., Defendants

MOTION OF DEFENDANTS TO DISSOLVE THREE JUDGE COURT—
Filed May 8, 1953

The defendants move for a dissolution of the three-judge court heretofore constituted for the following reasons:

1. No *substantial* constitutional question has been raised.
2. The Act of Congress, the constitutionality of which is under attack, is purely of local application.

Vernon E. West, Corporation Counsel, D. C.; Oliver Gasch, Assistant Corporation Counsel, D. C.; J. H. Baumgartner, Jr., Assistant Corporation Counsel, D. C.

CERTIFICATE OF SERVICE—(Omitted in Printing)

[fol. 14] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

[Title omitted]

MOTION TO DISMISS OR IN THE ALTERNATIVE FOR SUMMARY JUDGMENT—Filed May 11, 1953

Defendants move the Court to dismiss these complaints, for the reason that each complaint fails to state a claim upon which relief can be granted. In the alternative, defendants move the Court for summary judgment, for the reason that there is no dispute as to any material fact, and defendants are entitled to judgment as a matter of law. There are attached hereto and made a part hereof the following exhibits: Exhibit 1—Affidavit of Carl R. Nolte, certifying to the plan for redevelopment of Project Area B (blue book attached); Exhibit 2—Affidavit of Dr. Daniel L. Seckinger, Director of Public Health for the District of Columbia; Exhibit 3—Affidavit of John R. Searles, Jr., Executive Director and Secretary to Board of Directors, District of Columbia Redevelopment Land Agency, with attachments thereto.

Let this be filed May 11, 1953. Curran, J.

Leo A. Rover, United States Attorney; Ross [fol. 15] O'Donoghue, Assistant United States Attorney; Frank H. Strickler, Assistant United States Attorney, Attorneys for Redevelopment Land Agency and National Capital Planning Commission; Vernon E. West, Corporation Counsel, D. C.; Oliver Gasch, Assistant Corporation Counsel, D. C.; John H. Baumgartner, Jr., Assistant Corporation Counsel, D. C., Attorneys for District of Columbia, F. Joseph Donohue, Lewis W. Prentiss and Renah F. Camalier.

Of Counsel: George F. Reisling, General Counsel, Redevelopment Land Agency; William S. Cheatham, General Counsel, National Capital Planning Commission.

CERTIFICATE OF SERVICE—(Omitted in Printing)

[fol. 16] EXHIBIT 1 TO MOTION TO DISMISS

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil Action No. 476-53

In the Matter of MAX R. MORRIS, Plaintiff.

v.

MARK LANSBURGH et al., Defendants

AFFIDAVIT OF CARL R. NOLTE, ASSISTANT SECRETARY OF THE NATIONAL CAPITAL PLANNING COMMISSION

Comes now Carl R. Nolte, who first being duly sworn according to law, upon oath, deposes and says:

1. That he is Assistant Secretary of the National Capital Planning Commission, an independent establishment of the Government of the United States.

2. That he examined the official Redevelopment Plan and other papers, documents, prints, tables, etc., bound together therewith and has compared all of them respectively with the copy of the plan and copies of the other documents bound together with the plan and attached hereto, and finds and hereby states that the attached binder contains true copies of the plan and all the papers, documents, prints, tables, etc., as were submitted to the Commissioners of the District of Columbia for their consideration.

Carl R. Nolte, Assistant Secretary, National Capital Planning Commission.

DISTRICT OF COLUMBIA, SS.:

Carl R. Nolte, Assistant Secretary of the National Capital Planning Commission, being first duly sworn on his oath deposes and says that he has read the foregoing affidavit by him subscribed; that he knows the contents thereof; that the matters and things therein set forth of his personal knowledge are true and those set forth upon information and belief he believes to be true.

[fol. 17] Carl R. Nolte, Assistant Secretary, National Capital Planning Commission.

Subscribed and sworn to before me this 6th day of May, 1953. Lorin A. Davis, Notary Public. My Commission expires November 14, 1956.

[fol. 18] EXHIBIT 2 TO MOTION TO DISMISS

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil Action No. 5791-'52

GOLDIE SCHNEIDER, Plaintiff,

v.

DISTRICT OF COLUMBIA, et al., Defendants

Civil Action No. 476-'53

MAX MORRIS, Plaintiff,

v.

MARK LANSBURGH, et al., Defendants

AFFIDAVIT OF DANIEL L. SECKINGER, M. D., Dr. P. H., DIRECTOR OF D. C. PUBLIC HEALTH

Daniel L. Seckinger, being first duly sworn on oath, deposes and says:

That he is the Director of Health for the District of Columbia; that he holds the degrees of Doctor of Medicine and Doctor of Public Health from Johns Hopkins University; that he has engaged in the practice of his profession since 1927.

He is personally familiar with conditions in Southwest Washington, particularly in that area described as Area B. He has, in company with his associates, made a study of health conditions existing in this area which is presently proposed for redevelopment. It is a slum area characterized particularly by the lack of those things which make for a good community. It contains inhabited alleys. It is over crowded to the extent that adequate living space for

families, especially those with children, is practically non-existent. The absence of open spaces providing adequate light and air is particualrly noticeable in this area. Almost all the buildings are worn out, dilapidated and lacking in [fol. 19] adequate sanitary facilites. The presence of large numbers of insects and rodents, coupled with the absence of fly screening and the lack of rat proofing, provide excellent opportunities for the spread of diseases not only in this area but into the adjacent communities. Morbidity and mortality rates for this and comparable slum areas far exceed morbidity and mortality rates elsewhere in the city. Attached hereto is a table of statistics and a diagram showing the area the statistics cover.

Failure to redevelop completely this area by the exclusion of relatively few buildings would in his opinion do much to nullify the effectiveness of the redevelopment program. In order to achieve proper and adequate living conditions in an area that has deteriorated to the extent which deponent has observed in Area B of Southwest Washington, it is extremely desirable from a public health standpoint, in fact, it is necessary, to redevelop and rebuild completely the area in question. That is the only method whereby the public health may be fully protected.

The most important considerations from a public health standpoint insofar as the redevelopment of the existing slum area is concerned are the following:

1. The need for the replacement of dilapidated, substandard, and worn out dwellings.

2. The need for providing adequate sanitary facilities for all dwellings.

3. The need for reducing area crowding and building crowding to the extent that all persons and particularly children will have adequate light and air.

[fol. 20] 4. The need to remove fundamental deficiencies which create harmful conditions and/or provide the sources from which pestilence and disease originate.

5. The desirability of a planned community which will provide the necessary space for healthful living in hygienic surroundings.

In the redevelopment of a specific area the failure to take all of the properties would jeopardize the fulfillment

of these fundamental purposes. Specifically, the failure to include all structures could nullify the community plan to the extent that the greatest benefits to the most people might not be achieved. Few if any buildings in slum areas have the necessary requisites of light, air, and sanitary facilities to make them comparable to new structures. In the years ahead such old buildings if left in redeveloped areas would become obsolete long before the general area and by reason of such obsolescence would become sore spots in the new community thereby providing the foci of new slums and the health dangers to be associated with them.

Daniel L. Seckinger, M. D., M. P. H.

Subscribed and sworn. Henry H. Laguillon, Notary Public, D. C. May 8, 1953.

[fol. 21] STATISTICS

Some specific statistics of the United States Bureau of the Census show examples of the health conditions in Census Tract #60 which includes Project Area B. They are as follows:

ALL CAUSES

1949 —	Tract #60 Death Rate	16.2%	per 100,000 pop.
	Overall, D.C. " "	9.5%	"
1950 —	Tract #60 Death Rate	17.3%	"
	Overall, D.C. " "	10.5%	"
1951 —	Tract #60 Death Rate	15.5%	"
	Overall, D.C. " "	10.1%	"

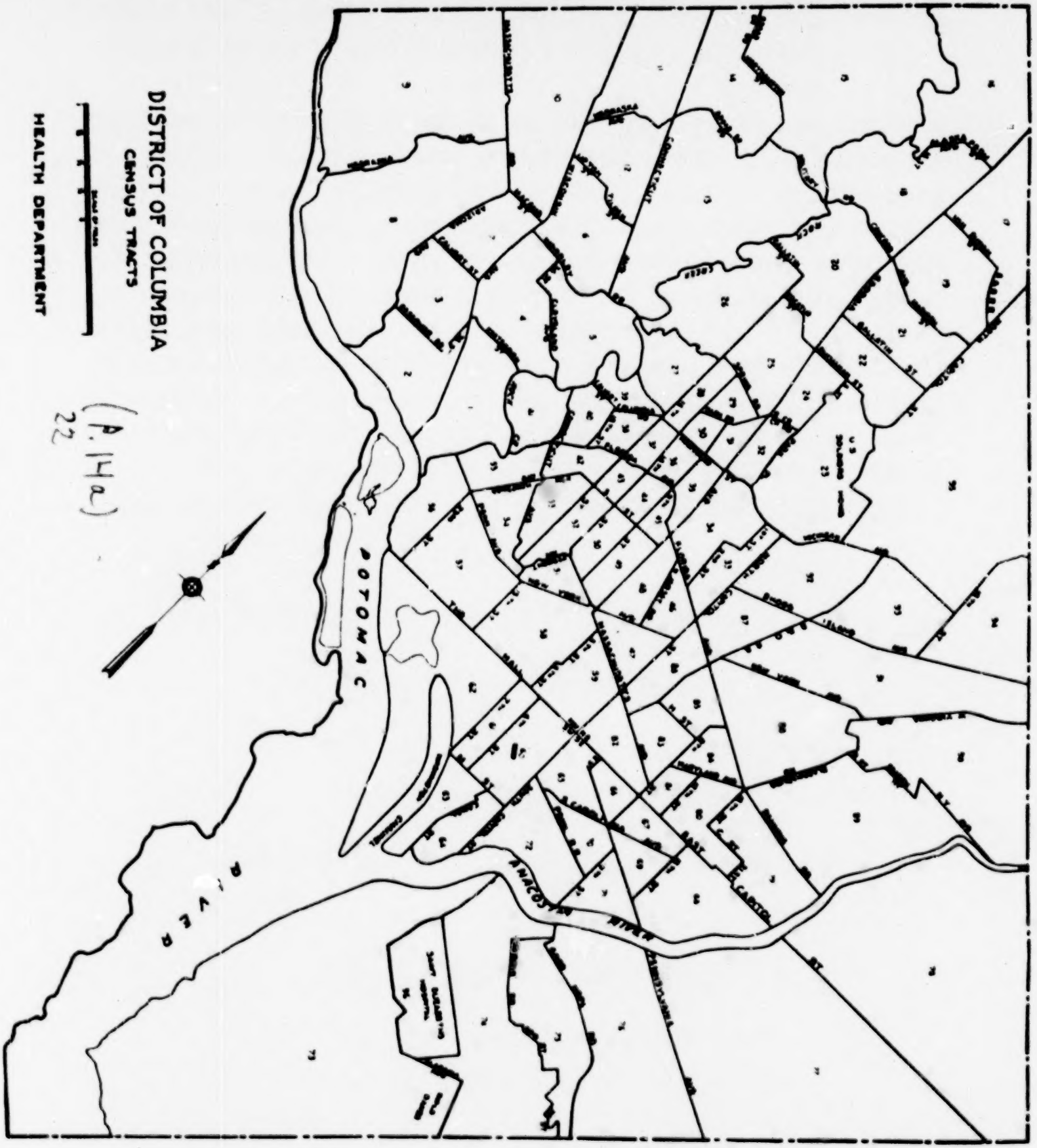
TUBERCULOSIS

1949 —	Tract #60 Death Rate	118.0%	per 100,000 pop.
	Overall, D.C. " "	52.4%	"
1950 —	Tract #60 Death Rate	136.0%	"
	Overall, D.C. " "	50.5%	"
1951 —	Tract #60 Death Rate	83.7%	"
	Overall, D.C. " "	35.5%	"

SYPHILIS

1949 —	Tract #60 Death Rate	33.7%	"
	Overall, D.C. " "	12.2%	"
1950 —	Tract #60 Death Rate	10.5%	"
	Overall, D.C. " "	9.2%	"
1951 —	Tract #60 Death Rate	41.8%	"
	Overall, D.C. " "	7.1%	"

(Page 14:) Here follows 1 photolithograph, side folio 22



(P. 14a)
22

[fol 23] EXHIBIT 3 TO MOTION TO DISMISS

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil Action File No. 5791-'52 and
Civil Action File No. 476-'53

GOLDIE SCHNEIDER, Plaintiff

v.

DISTRICT OF COLUMBIA, et al., Defendants

MAX R. MORRIS, Plaintiff,

v.

MARK LANSBURGH, et al., Defendants

CITY OF WASHINGTON, DISTRICT OF COLUMBIA (ss)

Affidavit

John R. Searles, Jr., being first duly sworn, on his oath, deposes and says that he is, the Executive Director of, and Secretary to, Board of Directors of the District of Columbia Redevelopment Land Agency, a government corporation operating within the District of Columbia for the purpose of "replanning and rebuilding of slum, blighted and other areas," pursuant to an Act of Congress, the District of Columbia Redevelopment Act of 1945, (as amended, approved August 2, 1946); and makes the following statements knowing the contents thereof; and that this same is true to his own knowledge, except as to matters therein stated on information and belief, and as to those matters he believes it to be true.

The District of Columbia Redevelopment Land Agency, (hereinafter referred to as the "Land Agency"), was established by the District of Columbia Redevelopment Act of 1945, (hereinafter referred to as the "Redevelopment Act"), (Exhibit A) which became law on August 2nd, 1946. This law established the Land Agency as a corporation of perpetual duration and given important powers, to clear and

make available for redevelopment, slum and blighted areas in the District of Columbia. The Land Agency's powers are exercised by a Board of Directors consisting of five members, two appointed by the President of the United States and three others by the Board of Commissioners of the District of Columbia, (hereinafter referred to as the "D. C. Commissioners"). All five are required to be confirmed by the United States Senate. The original appoint- [fol 24] ments were made in March of 1947.

Mr. Mark Lansburgh and the Honorable George A. Garrett were the Presidential appointees and Messrs. James E. Colliflower, Richard R. Atkinson and Edward A. Dent were D. C. Commissioner's appointees. Mr. Lansburgh, Mr. Colliflower and Mr. Atkinson are still members of the Board. Mr. John A. Remon has replaced Mr. George A. Garrett as one of the Presidential appointees and Mr. Francis F. Healy has succeeded Mr. Edward A. Dent as a Commissioner's appointee.

The Redevelopment Act establishes certain conditions precedent to the exercise of the powers of the Land Agency. Section 6 of the Redevelopment Act requires the development of a comprehensive plan for the District of Columbia and its environs by the National Capital Planning Commission, (hereinafter referred to as the "Planning Commission"). Shortly after the passage of the Redevelopment Act, funds were appropriated by the Congress for the preparation of such plan and it was prepared and published in 1950.

Other conditions precedent to the exercise of the Land Agency's power are the adoption of boundaries of a redevelopment project by the Planning Commission and the approval of this adoption by the D. C. Commissioners. Then a redevelopment plan for the area must be adopted by the Planning Commission and approved by the D. C. Commissioners after a public hearing.

After these steps have been undertaken, the Planning Commission is required under Section 6 of the Redevelopment Act to certify the project area plan to the Land Agency to be carried out. The Land Agency must then acquire the land in the project area by eminent domain or otherwise and prepare it for sale, lease or transfer to

private or public bodies for rebuilding in accordance with the plan. The Redevelopment Act authorizes a 20 million dollar trust fund to finance the activities of the Agency, but this has not as yet been made available by the Congress.

On July 15, 1949 the Congress provided an alternate means of financing the operations of the Land Agency in the Housing Act of 1949, (hereinafter referred to as the "Housing Act"). (Exhibit C) Section 609 of the Housing Act provides a new Section 20 for The Redevelopment Act and provides for the full participation by the Land Agency in the federal slum clearance and urban redevelopment program established by Title I of the Housing Act.

[fol. 25] Among the forms of financial assistance provided by the Housing Act for local redevelopment activities are advances of funds for the preparation of redevelopment projects, loans for undertaking redevelopment projects and capital grants which are available to defray up to two-thirds of the net cost of completing redevelopment projects.

The Housing Act authorized the Housing and Home Finance Administrator, (hereinafter referred to as the "Administrator"), to contract with local redevelopment agencies to pay up to $500,000,000 in capital grants. One of the first Acts of the Administrator under the provisions of the Housing Act was to permit cities to request him to earmark a portion of his authority for contracting for capital grants. Accordingly, on May 16, 1950 the D. C. Commissioners requested the Administrator to earmark $2,250,000 for redevelopment in the District of Columbia. This amount was arrived at by consideration of the sharing formula devised by the Administrator and was understood to be far less than local needs. On May 29, 1950 the Administrator advised the D. C. Commissioners that he had reserved $2,250,000 of the total capital grant reservation for the District of Columbia.

The Administrator has divided advances for preparing projects in two categories. These are preliminary advances for early studies of slum areas to identify specific redevelopment projects to be undertaken and final advances for land appraisals and detailed plans for undertaking the specific projects which have been identified in the preliminary advance stage.

On December 29, 1950 the Land Agency submitted an application to the Administrator for a preliminary advance of funds to make surveys and plans and other studies necessary to identify redevelopment projects in three large slum areas in the Southeast, Southwest and Northwest sections of Washington, all coming to a point at the Nation's Capitol. This application had been approved by the D. C. Commissioners on the October 29th 1950.

The application was approved by the Administrator in early January 1951 and a contract was prepared to govern the advance funds from the Administrator to the Land [fol. 26] Agency. On January 18th the D. C. Commissioners approved the execution of this contract between the Land Agency and the Administrator. The contract was executed on January 19th and provided for a total preliminary planning advance of $170,185.00. The first installment of this amount was paid to the Land Agency on January 25, 1951.

Under the provision of the Redevelopment Act the D. C. Commissioners may authorize the Land Agency to transfer as much of the advances received by the Land Agency to the Planning Commission as the D. C. Commissioners determine are necessary for the Planning Commission to carry out its functions under the Redevelopment Act. Under such a determination by the D. C. Commissioners the Land Agency agreed in March 1951 to transfer $28,600.00 to the Planning Commission for its part in the preparation of redevelopment projects in the three survey areas.

The first studies of the Planning Commission and the Land Agency were concentrated in the Southwest Area. After these preliminary studies which included a field inspection of building condition, family characteristics and analyses of census and other data by the staffs of the Land Agecy and the Planning Commission, the Planning Commission adopted boundaries of five project areas which together covered all land in the Southwest lying South of the Pennsylvania Railroad tracks and between 9th, South Capitol, and P Street and Maine Avenue. The adopted boundaries were approved by the D. C. Commissioners on August 21, 1951.

Projects 1 and 2 lay in the eastern portion of the Southwest where the surveys had determined that the worst conditions of blight and slums existed. Project 2 to the

North lay in the proposed path of the Southwest throughway for which preliminary studies had not yet been completed. The Planning Commission and the Land Agency therefore recommended that redevelopment begin in Project Area No. 1. On September 25, 1951 the D. C. Commissioners approved an application to be made by the Land Agency to the Administrator for a final advance for Project No. 1 in an amount not to exceed $150,000.00.

[fol. 27] This application was prepared and submitted by the Land Agency to the Administrator on October 17, 1951. The application was for $149,500.00.

During the review by the Administrator of this application, the report of the Regional Highway Committee was completed and the Highway Department of the District of Columbia, the Land Agency and the Planning Commission felt that the first project should be coordinated with the high priority section of the inner-circumferential throughway described in the report of the Regional Highway Committee. Accordingly, on March 21, 1952 the Planning Commission rescinded its adoption of the five project areas and adopted the boundaries of two new project areas identified as Project A and Project B. Project A included the slum and blighted area in the western portion of the Southwest and Project B corresponded to the previous Project 2 and the northern portion of Project 1. This action was followed by a rescis-ion on the part of the Board of Commissioners of their previous approval of the five project areas and a new approval of the boundaries of Projects A and B.

On April 10, 1952 the Land Agency amended its application to the Administrator for a final advance to provide funds for final planning for Project B rather than Project No. 1.

This application was approved by the Administrator as of June 6, 1952, and the contract for the advance of funds dated June 6, 1952 was executed between the Land Agency and the Administrator.

On June 26th the D. C. Commissioners approved this action of the Land Agency. The D. C. Commissioners also determined that the Land Agency should transfer $10,000.00 of the funds received from the Administrator under the Final Advance Contract to the Planning Commission for its part in the final planning of Project Area B. This

was done. On October 24, 1952 after the completion of final plans for Project Area B, the Planning Commission adopted a redevelopment plan for the area (Exhibit 1) in accordance with Section 6 of the Redevelopment Act.

[fol. 28] In order to enable the Planning Commission to make a final determination of the slum and blighted condition of Project Area B, the Land Agency using trained inspectors under a highly qualified supervisor on its staff made a final detailed survey of every structure in the area. The survey was made using the American Public Health Association appraisal technique. This technique has been devised by the Committee on the Hygiene of Housing of the American Public Health Association and is recognized by the United States Public Health Service and others as being the most thorough of all standardized housing survey techniques. The survey showed that 64.3% of the dwellings in the area were beyond repair, 18.4% needed some major repairs and only 17.3% could be considered satisfactory. On the basis of deterioration alone 79.7% of the houses in the area were in an unsatisfactory condition. The survey also revealed that 57.8% of the dwellings depended upon outside toilets, 60.3% had no baths, 29.3% had no electricity, 82.2% had no wash basin or laundry tubs and 83.8% had no central heating.

These figures are based on a total of 1345 dwelling units in 1006 structures. These structures house a total population of 5012 of whom 97.5 are Negro. A summary of the results of the survey was considered by the Planning Commission and the D. C. Commissioners in support of the redevelopment plan for Southwest Project Area B. (Exhibit E).

The conditions of slum and blight shown so clearly by the survey using the American Public Health Association appraisal technique are emphasized and supported by the attachead affidavit by Dr. Daniel Seckinger, Director of Health of the District of Columbia. (Exhibit 6). Dr. Seckinger's affidavit demonstrates the intimate relationship between conditions of slum and blight in the Project Area and health, crime and juvenile delinquency.

Minor revisions in the boundaries of the Project area were also made by adoption at this time by the Planning Commission. On November 10th the D. C. Commissioners

[fol. 29] approved the minor boundary modifications and authorized the Land Agency to change its contract with the Administrator accordingly.

The D. C. Commissioners upon the receipt of the adopted redevelopment plan from the Planning Commission called a public hearing. The notice of the hearing was published in the Washington Evening Star newspaper on November 17th, 24th and December 1st, 8th and 15th, 1952. The hearing was called for December 17th, 1952 and was to satisfy the requirements of both Section 6(b) (2) of the Redevelopment Act and Section 105(d) of the Housing Act which was binding on the Land Agency through its contract with the Administrator. On December 17th, 1952 the D. C. Commissioners held a public hearing on the redevelopment plan for Project Area B in the District Building at 13th and E Streets, N. W. A transcript of the hearing is on file in the offices of the D. C. Commissioners.

The testimony from some 50 persons, groups and organizations presented at the public hearing was predominantly in favor of carrying out the plan for Project B. All persons or groups present at the hearing who requested to be heard were given a full opportunity by the D. C. Commissioners to make a public statement.

After the hearing, on December 30th, 1952, the D. C. Commissioners approved the redevelopment plan for Project B, and also approved the application by the Land Agency to the Administrator for loan funds and grant funds for carrying out the redevelopment plan for Project B.

On December 31st, 1952 the Planning Commission certified the adopted and approved redevelopment plan for Project B to the Land Agency for execution, thus completing the steps precedent to the exercise of the Land Agency's acquisition powers provided in Section 6 of the Redevelopment Act.

On January 30th, 1953 the Land Agency applied to the Administrator for a loan to finance its operations in accordance with the Redevelopment Act and the redevelopment plan for Project B, and for a capital grant to defray not over two-thirds of the cost of carrying out the project. The Administrator approved the application on April 3rd, 1953, and a contract dated that day has been executed providing for loans from the Administrator to the Land Agency in

an amount not to exceed $8,838,391.00 and for capital grants not to exceed $6,385,186.00. The execution of this contract was approved by the D. C. Commissioners on April 20th, 1953.

[fol. 30] On April 10th, 1953 an agreement was executed between the D. C. Commissioners and the Land Agency, whereby the D. C. Commissioners agreed to supply not less than one-third of the cost of undertaking Project B in land or public facilities or other expenditures eligible as local grants in aid as defined in the Housing Act, or to include cash payments to make up the one-third of the net project cost in their annual estimates of appropriations. (Exhibit G).

In order to provide for an orderly plan of land acquisition in Project B, the Land Agency determined that it was necessary for it to negotiate with the future purchasers or lessors of land in the project area prior to commencing acquisition. Consequently the Land Agency advertised in four Washington newspapers, The Washington Evening Star, The Washington Post, The Washington Daily News and the Washington Times-Herald that it was interested in proposals to negotiate. (Exhibit H). Such proposals to be received by the Land Agency thirty days after approval of the plan by the D. C. Commissioners. This thirty day period was extended later by action of the Board of Directors of the Land Agency to March 16, 1953, or forty-five days from the original date. Letters were received in response to the advertisement from approximately 50 persons or firms all of whom were mailed the full informational material on the making of proposals to negotiate for the purchase or lease of land in Project B. (Exhibit I).

The request for proposals (Exhibit H) set forth on page 4 the criteria on which the proposals would be evaluated. The most important of these criteria were the price to be paid for the land, the rents proposed to be charged for low rent housing units and the degree to which the proposal met the requirements and objectives of the redevelopment plan. This statement was supplemented by an announcement in the magazine of the Washington Building Congress, a medium read by members of the building industry in the Washington Metropolitan area, which set forth the request for proposals and the basis on which they would be judged.

On March 16, 1953 the Land Agency received ten proposals to negotiate for the purchase or lease of land in Project B. Four of these proposals were for the entire proj- [fol. 31] ect area. One was for the entire residential section and a portion of the retail. One was for a portion of the retail. Four were for portions of the second commercial or industrial part of the project area. The Land Agency made a thorough review of these proposals and invited the firms making proposals for the residential portion of the area to make a presentation in person to it and to other public officials including the staff of the District of Columbia Insuring Office of the FHA, the Zoning Commission, the Building Inspector and the National Capital Planning Commission. As a result of this analysis, the personal presentations, the proposals themselves and a thorough study of each, the Board of Directors of the Land Agency, on April 29, 1953 determined to accept the proposals to negotiate of the Bush Construction Company which indicated an interest in all the residential area and part of the retail, and from five other bidders all of whom now own property in the area. These are the Safeway Stores, Inc., Martin Wiegand, Inc., Eagle Transfer Company, Max Greenwald, and Rudderforth Brothers. (Exhibit K.) This combination of proposals to negotiate was accepted by the Board of Directors of the Land Agency for the following reasons:

(a) The proposals were in accord with the redevelopment plan in the judgment of the Board of Directors of the Land Agency;

(b) The rents proposed to be charged for one-third of the residential accommodations were as low as any offered and met the requirement of the Redevelopment Plan, that one-third of the new units to be provided for low rent;

(c) The return on the land to the Agency was the highest which could be obtained from any other proposal or combination of proposals, thus reducing the public cost to the greatest extent possible.

(d) The Agency was able to recognize the interest of five businesses in the area who chose to remain in the area after redevelopment and who responded to the

Agency's public call for proposals to rebuild the area after clearance of the slums and blight.

[fols. 32-91] (e) The Bush Construction Company indicated that it would assist the Agency in finding new homes for families now living in the area and not choosing to return by constructing new housing in the Washington area.

The Agency is now in the process of opening negotiations with the six companies which are intended to lead to a consummation of contracts for the disposition of the land in Project B.

District of Columbia Redevelopment Land Agency, John R. Searles Jr., Executive Director and Secretary Board of Directors.

Subscribed and sworn to before me this 8th day of May 1953. Helen L. Cavanagh, (Seal.) Notary Public, D. C.

[fol. 92] **Exhibit G to Exhibit 3**

Agreement

This Agreement, entered into as of this 10 day of April, 1953, by and between the Board of Commissioners of the District of Columbia (hereinafter called the "Commissioners") and the District of Columbia Redevelopment Land Agency (hereinafter called the "Agency").

Witnesseth that:

Whereas, the Agency, a public body and a body corporate duly created, existing and functioning under the District of Columbia Redevelopment Act of 1945, as amended, in cooperation with the Commissioners, will endeavor to undertake and develop a slum clearance and urban redevelopment project in the Southwest Redevelopment Project Area "B", (hereinafter called the "Project Area"); and

Whereas, the National Capital Planning Commission (hereinafter called the "Commission") has duly adopted on October 24, 1952, the boundaries of the Project Area in accordance with Sec. 6(b) (1) of the District of Columbia

Redevelopment Act of 1945, as amended (hereinafter called the "Redevelopment Act") which boundaries are as follows:

Beginning for the same at the intersection of the center line of South Capital Street and a prolongation of the north line of I (Eye) Street (running through the present U. S. Reservation No. 484 in use for recreation purposes and known as Randall Recreation Center) thence west on the north line of I (Eye) Street to the east line of Half Street; thence south on the east line of Half Street to the center line of I (Eye) Street; thence west on the center line of I (Eye) Street to the center line of 4th Street; thence north on the center line of 4th Street 136.58 feet to a point where the southerly line of Lot 89, Square 541, projected west, intersects the center line of 4th Street; thence east along the [fol. 93] southerly line of Lot 89, Square 541, and the westerly prolongation thereof, 155.0 feet to the east line of Lot 89 in said square; thence north along the east line of Lots 89 and 90, Square 541, to the north line of Lot 90 in said square; thence west along the north line of Lot 90 in said square and a prolongation thereof 155.0 feet to the center line of 4th Street; thence north along the center line of 4th Street 263.17 feet to a point where the north line of Lot 70, Square 497, projected east, intersects the center line of 4th Street; thence west 149.0 feet; thence south 15.27 feet; thence east 26.24 feet; thence south 70.56 feet to the center line of H Street; thence west along the center line of H Street 137.24 feet; thence north 162.33 feet; thence east 17.30 feet; thence north 80.33 feet to the south line of Lot 43, Square 497; thence west 12.24 feet to the west line of Lot 43 in said Square 497; thence north along the west line of Lot 43 in said square and a prolongation thereof to the center line of G Street; thence east along the center line of G Street 381.94 feet to a point 72.0 feet east of the east line of 4th Street; thence north 95.75 feet; thence east 3.0 feet; thence north 16.0 feet; thence east 25.0 feet; thence north 150.83 feet; thence west 25.0 feet; thence north 61.75 feet to the south line of F Street; thence east along the south line of F Street 25.0 feet; thence north 282.58 feet; thence west 25.0 feet to the

west line of Lot 16 in Square 538; thence north along the west line of said Lot 16 in Square 538 and a prolongation thereof to the center line of E Street; thence east along the center line of E Street to the southerly property line of the P. B. and W. Railroad right-of-way; thence along said southerly boundary of the P. B. and W. Railroad right-of-way to the center line of South [fol. 94] Capitol Street; thence along the center line of South Capitol Street to the point of beginning. The following described properties are to be eliminated from the above-described boundary outline; Lots 5, 6, 32, 33 and 34 in Square 643, being the property owned by the Trustees of the Friendship Baptist Church; and

Whereas, the Commission has duly adopted a redevelopment plan for the project area in accordance with Sec. 6(b) (2) of the Redevelopment Act; and

Whereas, the Commissioners have duly approved said adoptions of boundaries and redevelopment plan after a public hearing thereon in accordance with Sec. 6(b) (1) and 6(b) (2) of the Redevelopment Act; and

Whereas, said duly adopted and approved redevelopment plan has been certified by the Commission to the Agency in accordance with Sec. 6(d) of the Redevelopment Act, whereupon the Agency shall proceed to exercise its powers under the Redevelopment Act to acquire and assemble real property in the project area; and

Whereas, the Agency proposes to enter a contract with the Housing and Home Finance Administrator (hereinafter called the "Administrator") for Federal assistance under the Housing Act of 1949 (hereinafter called the "Housing Act") to exercise said powers to carry out a project (hereinafter called the "Project") in the Project Area under the Housing Act; and

Whereas, as a condition of said proposed contract, the Administrator requires assurance that local grants-in-aid will be provided equal to at least one-third of the net project cost of this project or equal to at least one-third of the aggregate of the net project costs of all projects undertaken by the Agency with Federal assistance under the Housing Act, whichever is the lesser.

[fol. 95] Now, therefore, the Commissioners and the Agency do mutually agree as follows:

Sec. 1. The Commissioners agree to provide grants-in-aid to the Project in an amount equal to at least one-third of the net project cost of the project as follows:

(a) Cause to be constructed or placed under construction all or any of the following improvements or cause to be performed or commenced all or any of the following work:

(1) A gymnasium at the Randall Junior High School at an estimated cost of $160,000, and not less than 57.5% of the actual cost thereof shall be credited to the project as grant-in-aid, estimated as $92,000;

(2) A summer-winter swimming pool at the Randall Junior High School at an estimated cost of $600,000, and not less than 57.5% of the actual cost thereof shall be credited to the project as grant-in-aid, estimated as $345,000;

(3) Necessary playground improvements in the play area adjoining Randall Junior High School at an estimated cost of $102,830, and not less than 57.5% of the actual cost thereof shall be credited to the project as grant-in-aid, estimated as $59,127;

(4) That portion of the Southwest Express Way crossing South Capitol Street and proceeding west to the western limit of the project, including approaches, at an estimated cost of $9,363,200, and not less than 33⅓% of the actual cost thereof shall be credited to the project as grant-in-aid, estimated as $3,121,066;

[fol. 96] (5) Such other improvements or facilities as may be primarily of direct benefit to the project area and necessary to serve and support new uses in the project area, or as may be of direct and substantial benefit to the project, and the entire cost or appropriate portion thereof, respectively, shall be credited to the project as grant-in-aid.

(b) Donate such land and perform such demolition or removal work or construct such site improvements in the project area as may be agreed upon by the Com-

missioners and the Agency, and the cash value of such land and the actual cost of such work and construction shall be credited to the project as grants-in-aid.

(c) If the aggregate of all amounts credited (under subsections (a) and (b) of this Section 1 and under Section 2) to this project as local grants-in-aid is, at the time final determination is made of the net project cost of this project, less than one-third of such net project cost, the Commissioners will make a cash payment of such deficiency from funds of the District of Columbia, Provided, that it is a condition precedent to the obligation of the Commissioners to make any cash payment hereunder that the net project cost of this project does not exceed eleven million dollars ($11,000,000.00).

Sec. 2. That credits towards this project for non-cash grants-in-aid which exceed the obligation of the Commissioners hereunder shall be credited towards any other project thereafter undertaken or completed; and any amounts for non-cash grants-in-aid which may have been credited towards the obligation of the Commissioners to furnish grants-in-aid for any other project, which exceed the total credits required from the Commissioners for such project, may at the option of the Commissioners be credited towards the obligation of the Commissioners with respect to this project.

[fol. 97] Sec. 3. (a) With respect to the improvements, facilities, work and donations described in Section 1 hereof, credit towards the project shall be made only if the same have been placed under construction, commenced or initiated prior to July 1, 1956, and only after the Agency has certified to the Commissioners that such improvements, facilities, work and donations meet all requirements for local grants-in-aid prescribed by Section 110 (d) of the Housing Act exclusive of the limitation contained in the last sentence of said Section 110 (d).

Provided, however, that, if the Agency shall not have transferred the land described in Section 7 below for the Southwest Expressway and for the play area adjoining Randall Junior High School described in Section 1 (a) (3) above by July 1, 1955, the date in this section shall be ex-

tended to a date which shall be one year after the date of the transfer of said land.

(b) Facilities and improvements shall be deemed to have been "placed under construction" and work shall be deemed to have "commenced" on the date an award of contract is made for any part of the facility, improvement or work, or on the date the Commissioners or the head of the appropriate District department authorizes work to be performed by District forces; and a donation shall be deemed to have been "initiated" on the date that the Commissioners and the Agency agree generally upon land to be donated even though the precise dimensions or the price have not been determined.

Sec. 4. The Commissioners agree that all improvements and facilities placed under construction and work commenced and donations initiated prior to July 1, 1956, or such later date as may be determined by the operation of the proviso to Section 3 above, shall be completed within a reasonable time thereafter.

Sec. 5. The Commissioners agree that the aforementioned swimming pool and gymnasium will be constructed in the area designated as the Randall Recreation Center.

[fol. 98] Sec. 6. It is expressly understood and agreed that the final determination of the net project cost of this project will not be made prior to July 1, 1957.

Sec. 7. That land in Squares 538, 583, 584 and N-642 extending 150 feet north of the F Street north-right-of-way line; and land in Square 585 and Square E-642 needed for the construction of the Southwest Section of the inner belt express way located in Project Area B, when acquired will be transferred, cleared of such improvements as may be mutually agreed upon, to the District of Columbia by the Agency at a price to be agreed upon by the Commissioners and the Agency and subject to the approval of the Housing and Home Finance Administration.

Sec. 8. Any sums payable hereunder by either party to the other shall not bear interest.

Sec. 9. The clause "the Commissioners will make a cash payment of such deficiency from funds of the District of Columbia", contained in Section 1(c) hereof, shall mean that upon determination of the amount of such deficiency

the Commissioners shall, as provided in Section 20(d) of the District of Columbia Redevelopment Act of 1945, as amended by Section 609 of the Housing Act of 1949, include an item for such cash payment in their annual estimates of appropriations and shall thereafter promptly make such payment from funds appropriated for such purpose.

Sec. 10. The ability of the Commissioners to place the portion of the Southwest Express way described in Section 1 (a) (4) under construction prior to July 1, 1956, is dependent upon transfer of the land described in Section 7 to the District of Columbia, cleared of such improvements as may be mutually agreed upon, prior to July 1, 1955, and the failure of the Agency to complete prior to July 1, 1955, [fol. 99] transfer of all land described in said Section 7 shall operate as an extension of the date by which the Commissioners agree to commence their undertakings and fulfill their obligations contained in this Agreement in accordance with the proviso to Section 3 (a) above.

Sec. 11. This Agreement supercedes the agreement executed between these same parties dated th 12th day of February, 1953 and numbered D. C. F.—A 630.

Sec. 12. This Agreement may be amended from time to time by mutual agreement of the parties hereto, subject to approval by the Housing and Home Finance Administrator.

In witness whereof, The Commissioners and the Agency have respectively caused this Agreement to be duly executed as of the day and year first above written.

The Commissioners of the District of Columbia, (S.) by G. M. Thornett, Secretary, Board of Commissioners; District of Columbia, Redevelopment Land Agency. (S.) by John A. Remon. (Seal.)

——. (Seal.)

Attest: ——. Approved as to form. (S.) Lee F. Doute, Assistant Corporation Counsel.

[fol. 100] Government of the District of Columbia,
Executive Offices

Washington 4, D. C.

Be it resolved by the Board of Commissioners of the District of Columbia; as follows:

(1). That the percentages specified in Section 1(a) (1)(2)(3) and (4) of the Agreement by and between the Board of Commissioners and the D. C. Redevelopment Land Agency dated April 10, 1953, are intended to be approximate only; and

(2). That it is further understood that the amount that may be recognized as an eligible local grant-in-aid for the facilities therein described is subject to the future determination of the Housing and Home Finance Administrator; and

(3). That this Resolution shall take effect immediately and be attached to such Agreement dated April 10, 1953.

Board of Commissioners of the District of Columbia,

(S.) by G. M. Thornett, Secretary to the Board.

Dated: April 28, 1953.

[fol. 101] EXHIBIT H TO EXHIBIT 3

Proposals

The District of Columbia Redevelopment Land Agency engaged in slum clearance and urban redevelopment activities in the District of Columbia intends to assemble land in the area described below and to offer said land for sale or lease. The purchaser or lessee will be required to develop the land in accordance with the specifications which are a part of the redevelopment plan adopted by the National Capital Planning Commission and to be approved by the Board of Commissioners of the District of Columbia. The area to be leased or sold is identified as Southwest Redevelopment Project Area B, is located in the Southwest section of the city and a general description follows: That

property contained within the following boundaries: by a line extending from 4th and E Streets, east on E Street to the railroad tracks on Virginia Avenue; southeast along the railroad tracks to South Capitol Street; south on South Capitol to K Street; west on K Street to Half Street; north on Half Street to I (Eye) Street; west on I (Eye) Street to 4th Street; north on 4th Street to H Street; west on H Street to a point approximately 200 feet behind the building line of the 4th Street properties; north on a line to G Street; east on G Street to 4th Street; and north on 4th Street to point of origin. The boundaries designated herein shall be taken to be the center lines of the named streets unless otherwise specified. The Land Agency is now prepared to negotiate, to the stage of a commitment, for the disposition of the land described above. Under the provisions of the District of Columbia Redevelopment Act of 1945, as amended, the Land Agency may enter contracts for the disposition of land without competitive bidding, provided it holds a public hearing prior to the execution of the contract. Proposals are, therefore, invited from individuals, corporations, partnerships, etc., interested in purchasing or leasing the land and redeveloping it in accordance with the requirements of the redevelopment plan and the specifications pertaining thereto. Detailed information with respect to the requirements of the plan and format of proposals for the purchase or lease of the land described above and other blighted land in the city will be furnished by the Land Agency upon receipt of a written request. Official; John R. Searles, Jr., Executive Director, District of Columbia Redevelopment Land Agency, 499 Pennsylvania Avenue, N. W., Washington 1, D. C.

The advertisement above was published in the four principal daily newspapers of the District of Columbia on November 17, 1952.

[fol. 102] EXHIBIT I TO EXHIBIT 3

D. C. Redevelopment Land Agency
499 Pennsylvania Avenue, N. W.
Washington 1, D. C.

November 12, 1952.

I. Requests for Proposals

The District of Columbia Redevelopment Land Agency invites proposals for the purchase or lease of land in Southwest Redevelopment Project Area B. The Land Agency is a separate corporation authorized by the Congress to acquire slum and blighted areas in the District of Columbia and to sell or lease land in these areas for redevelopment in accordance with an approved plan. In the near future, the Agency proposes to assemble land in the following described area in Southwest Washington;

Southwest Project Area B—That property contained within the following boundaries: by a line extending from 4th and E Streets, east on E Street to the railroad tracks on Virginia Avenue; Southeast along the railroad tracks to South Capitol Street; south on South Capitol to K Street; west on K Street to Half Street; north on Half Street to I (Eye) Street; west on I (Eye) Street to 4th Street; north on 4th Street to H Street; west on H Street to a point approximately 200 feet behind the building line of the 4th Street properties; north on a line to G Street; east on G Street to 4th Street; and north on 4th Street to point of origin.

The boundaries designated herein shall be taken to be center line of the named streets unless otherwise specified.

II. Time for Submission of Proposals

All proposals for the purchase or lease of land in Project Area B must be delivered to the offices of the District of Columbia Redevelopment Land Agency at 499 Pennsylvania Ave., N. W. by 2 P. M., on the thirtieth calendar day following the approval by the Board of Commissioners of the District of Columbia of the Redevelopment Plan for Southwest Redevelopment Project Area B.

Subsequent to receipt they will be presented for consideration to the Board of Directors of the Agency. No proposal will be acted on prior to this time although the staff of the Land Agency is prepared to answer questions relating to specifications governing the proposals. Additional material related to the proposal but not required herein will not be presented to the Board for consideration.
[fol. 103] The purpose of restricting the exhibits and other material, in support of proposals, is to prevent the expenditure of excessive funds for elaborate presentations. As a general rule, the Agency wishes only to have before it for considerations the same information which prompted the corporation, partnership, or individual to make the proposal. The Board will be governed in its determination to negotiate by the degree to which any proposal or proposals meet the criteria and requirements which are described herein.

III. Data To Be Furnished by the Land Agency

The Land Agency will make available to any corporation, partnership, or individual the following materials which must guide the preparation of proposals.

A. General Land Use Map of the Southwest Survey Area showing boundaries of Project Area B.

B. Land Use Map of Project Area B.

C. Map of Project Area B showing zoning changes.

D. Map of Project Area B showing streets and utilities to remain or to be constructed.

E. Topographic Map of Southwest Survey Area.

F. Specifications for Redevelopment Plan which will govern the acceptance of proposals.

IV. Method of Disposition

The Land Agency expects to begin acquisition of land in Project Area B early in 1953 and will have some portion of the land available for delivery during the year. The land may be sold or leased. In the event of sale, settlement must be made at the time of the delivery of the land. The Agency prefers to deliver the site in parts and will receive on delivery pro-rata partial payments of rent or sale price in accordance with the agreement to be negotiated. The actual

portion of the land to be delivered and sequence of delivery will be subject to negotiation and can be based on building-schedules and other factors. Proposals should specify whether for lease or sale and whether for all or part of the land in the Project Area. If for a part of the Project Area such part must be clearly and accurately described.

[fol. 104] V. Contents of Proposals

A. The proposal must include a list of all participants in the purchasing or leasing corporation, partnership, or individual to include at least the builder or builders, the proposed financing, and the architect or architects. The proposal should also include the name of the principal person or persons who will be responsible for dealing with the Agency in any negotiations. This list should be accompanied by statements of the experiences and background of all the participants listed, and may be supported by plans or photographs of completed construction built, financed, or planned by the participants and must indicate ability to procure construction and permanent financing on a scale comparable to the proposal submitted.

B. The purchase-price or annual payments under lease-hold must be shown in the proposal broken down, if possible, for certain sections of the area to be purchased, and indicating preferably, on a square-foot basis, the prices to be paid for land in different uses, i. e., row-houses, residential, apartment-residential, first-commercial, second-commercial, etc.

C. Proposals must also be accompanied by the following statements:

1. A general statement of intent to meet all requirements of the Redevolopment Plan referred to in paragraph 3 above.

2. A general statement which will indicate the approximate rentals or sales prices which the redeveloper expects to achieve for the different types of constructions in accordance with the plan described in paragraph III above.

D. 1. Residential.

a. Typical floor plans at scale ⅛"—1' 0". Two copies of each of the following applicable on 11" x 15" sheets—reproduction of pencil drawings, no color.

(1) Row Houses.
(2) Two Story Flats.
(3) Apartment Houses.
(4) Others.

b. Outline Specifications.

(1) Complete attached.

[fol. 105] 2. First and Second Commercial, other.

a. No typical floor plans. Show on site plan only. b. Outline specification. Indicate construction type only, with number of stories and basement proposed.

3. Site plan.

a. Show entire project, or portion for which proposal is made. Show building type and location, open space, new streets and alleys, etc.

b. Two copies on 11" x 15" sheet—reproduction of pencil drawing, no color.

VI. Evaluation of Proposals

The following are among the criteria which will guide the Board of Directors of the Land Agency in their review of the proposals:

A. The purchase price or rent proposed to be paid for the land.

B. The degree with which the proposal will produce a well-planned residential neighborhood and meet the broad objectives of the Redevelopment Program as well as the specifications and literal requirements of the Redevelopment Plan.

C. If the proposal is for a portion, rather than the whole, of the Project Area, consideration will be given to such proposal by examining the desirability of the proposal on its own merits and also as it complements

other proposals for a portion or the whole of the Project Area.

D. The rents or sales prices proposed for the new development.

E. The method by which the privately constructed "low-rent" housing requirement in the Redevelopment Plan will be met, including both the outline specifications (see paragraph 5-D) of the housing to be produced and the extent to which the estimated rent is lower than the specified rent level.

F. The experience, qualifications, ability, and interest of the principal participants involved in any proposal.

[fol. 106] VII. Acceptance of Other Proposals

The Land Agency will accept proposals subject to all general specifications which are applicable and described herein for other blighted portions of the city. The Agency reserves the right, however, to delay considerations of such proposals if the circumstances, in its opinion, dictate.

For further information, get in touch with Mr. John R. Searles, Jr., Executive Director of the D. C. Redevelopment Land Agency, at 499 Pennsylvania Avenue, N. W., Washington 1, D. C.

[fol. 107] February 26, 1953.

Memorandum

To: Persons and firms submitting proposals for redevelopment of Southwest Redevelopment Project Area B.

From: D. C. Redevelopment Land Agency.

The Board of Directors of the Redevelopment Land Agency will require that the attached letter, signed by the principal sponsor be submitted with the sponsors proposal.

[fol. 108] D. C. Redevelopment Land Agency,
499 Pennsylvania Avenue, N. W.,
Washington 1, D .C.

Date —— —, ——.

GENTLEMEN:

This letter, which is made a part of my proposal for the redevelopment of Southwest Redevelopment Project Area B, will serve to indicate my understanding that:

1. The Land Agency will be free to release the name of each sponsor submitting a proposal unless a sponsor, by written agreement with the Land Agency, does not desire such release.

2. That proposals, in their entirety, will become the property of the Redevelopment Land Agency.

—— ——.

[fol. 109] January 5, 1953.

Memorandum

To: Persons and firms submitting proposals for redevelopment of Southwest Redevelopment Project Area B.

From: D. C. Redevelopment Land Agency.

The Board of Commissioners of the District of Columbia, on December 30, 1952 approved the Redevelopment Plan for Southwest Redevelopment Project Area "B".

The prospectus prepared by the Land Agency, dated November 12, 1952 indicated that proposals from redevelopers would be considered if received no later than the thirtieth calendar day following the approval of the Redevelopment Plan by the Commissioners. The Board of Directors of the Land Agency has extended that date to the seventy-fifth calendar day following approval of the plan. Accordingly, the deadline for the submission of proposals is not set at 2:00 P. M., March 16, 1953.

[fol. 110] December 4, 1953.

Memorandum

To: Persons and firms submitting proposals for redevelopment of Southwest Redevelopment Project Area B.

From: D. C. Redevelopment Land Agency.

Some confusion has arisen for some of you with respect to the number of dwelling units which can be constructed in Project Area B. The confusion results from the Building Site Plan prepared by the National Capital Planning Commission and included in the material you received.

We wish to state categorically:

1. The allowable number of units under the plan is no less than 750 and no more than 900.

2. The Building Site Plan (Plate 5) has no official status, nor the approval of the Land Agency. It is merely a demonstration by the Planning Commission of their requirements in the Specifications. Any building site plan submitted by you will be considered for its conformance to the Specifications (see Appendix E) and not in any manner or form to the suggested Building Site Plan.

[fol. 111] District of Columbia Redevelopment Land Agency

499 Pennsylvania Ave., N. W.

Washington 4, D. C.

NAtional 6000

Mark Lansburgh, Chairman; John A. Remon, Vice Chairman; Richard R. Atkinson, James E. Colliflower, Francis F. Healy; John R. Searles, Jr., Secretary.

November 25, 1952.

Dear Sir:

The attached maps complete the material which we agreed to furnish you for your consideration in submitting proposals on the development of Project Area B.

We wish to call your attention to Plates 5 and 18 in the report which you have already received. These are illustrative only of one solution to the site planning of the area.

They are not to be considered as binding or restrictive upon any redeveloper.

Very truly yours, Malcolm A. Burrows, Assistant Executive Director.

[fol. 112] EXHIBIT K TO EXHIBIT 3

A Resolution Passed by the Board of Directors of the District of Columbia Redevelopment Land Agency at a Special Board Meeting on April 29, 1953

Be it resolved by the Board of Directors of the District of Columbia Redevelopment Land Agency, as follows:

1. That, after due consideration of all proposals and their resulting public cost in relation to the public interest, the Board of Directors hereby accepts the proposals submitted to it on March 16, 1953 for the redevelopment of Southwest Redevelopment Project Area B by

a. The Bush Construction Co.
b. Safeway Stores, Inc.
c. Martin Wiegand, Inc.
d. Eagle Transfer Co.
e. Max Greenwald.
f. Rudderforth Brothers.

2. That the proposals are accepted as submitted but subject to:

a. Further negotiation as to all or any part of said proposal;

b. Concurrence of the Housing and Home Finance Administrator that this action is in accordance with the terms of the Loan and Grant Contract (No. UR-DC-LG-1).

3. That this resolution implies intent on the part of the Board of Directors but not a commitment to negotiate to the stage of final disposition contract and that such contract will not be executed by either party until and unless.

a. A public hearing has been held thereon and,

b. Such contract has been approved by the Housing and Home Finance Administrator.

4. That any land designated for the second commercial uses in the Redevelopment Plan for Project Area B not included in the above proposals be sold or leased to yield the maximum return to the public obtainable in accordance with said Redevelopment Plan.

[fol. 113] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER DENYING MOTION TO DISSOLVE THREE-JUDGE COURT—Filed May 18, 1953

Upon consideration of defendants' motion to dissolve Three Judge Court and argument in open Court on the same, it is by the Court this 15th day of May, 1953,

Ordered, That defendants' motion be and the same hereby is denied, without prejudice.

E. Barrett Prettyman, Judge; —— ——, Judge; Edward M. Curran, Judge.

[fol. 114] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

Civil Action No. 476-'53

[Title omitted]

DEFENDANTS' MOTION FOR LEAVE TO FILE SUPPLEMENTAL AFFIDAVIT OF DANIEL L. SECKINGER TO THEIR MOTION TO DISMISS OR IN THE ALTERNATIVE FOR SUMMARY JUDGMENT—Filed May 19, 1953

Defendants move the Court for leave to file supplemental affidavit of Dr. Daniel L. Seckinger with statistical table attached thereto. The said supplemental affidavit should be

marked as defendants' Exhibit 4 to the motion to dismiss or in the alternative for summary judgment.

Let this be filed. Curran, J., 5/19/53.

Leo A. Rover, United States Attorney; Ross O'Donoghue, Assistant United States Attorney; Frank H. Strickler, Assistant United States Attorney, Attorneys for Redevelopment Land Agency and National Capital Planning Commission; Ver-
[fol. 115] non E. West, Corporation Counsel, D. C.; Oliver Gasch, Assistant Corporation Counsel, D. C.; John H. Baumgartner, Jr., Assistant Corporation Counsel, D. C., Attorneys for District of Columbia, Samuel Spencer, Renah F. Camalier, and Louis W. Prentiss.

Of Counsel: George F. Reisling, General Counsel, Redevelopment Land Agency; William S. Cheatham, General Counsel, National Capital Planning Commission.

Certificate of Service—(Omitted in Printing)

[fol. 116] Memorandum of Points and Authorities in Support of Motion for Leave to File Supplemental Affidavit—Filed May 19, 1953

Rule 60, Federal Rules of Civil Procedure.

Leo A. Rover, United States Attorney; Ross O'Donoghue, Assistant United States Attorney; Frank H. Strickler, Assistant United States Attorney, Attorneys for Redevelopment Land Agency and National Capital Planning Commission; Vernon E. West, Corporation Counsel, D. C.; Oliver Gasch, Assistant Corporation Counsel, D. C.; John H. Baumgartner, Jr., Assistant Corporation Counsel, D. C., Attorneys for District of Columbia, Samuel Spencer, Renah F. Camalier, and Louis W. Prentiss.

Of Counsel: George F. Reisling, General Counsel Redevelopment Land Agency; William S. Cheatham, General Counsel, National Capital Planning Commission.

[fol. 117] EXHIBIT 4 TO MOTION TO DISMISS

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil Action No. 5791-'52

GOLDIE SCHNEIDER, Plaintiff,

v.

DISTRICT OF COLUMBIA, et al., Defendants

Civil Action No. 476-'53

MAX R. MORRIS, Plaintiff,

v.

MARK LANSBURGH, et al., Defendants

SUPPLEMENTAL AFFIDAVIT OF DANIEL L. SECKINGER

DISTRICT OF COLUMBIA, ss:

Daniel L. Seckinger, being first duly sworn on oath, deposes and says:

That reference to the table of statistics attached to his affidavit denominated Exhibit 2 in the above entitled causes discloses the inadvertent use of percentage marks where none should have been used and certain other typographical errors which have been corrected in the statistical table attached hereto.

Daniel L. Seckinger, M. D., Dr. P. H.

Subscribed and sworn to before me this 15th day of May, 1953. John Paul Foley, Notary Public, D. C. My commission expires Sept. 1, 1953.

[fol. 118] Resident Death Rates for Selected Causes for the District of Columbia for the Years 1949, 1950, and 1951

Selected death rates from data prepared by the Bureau of Vital Statistics of the D. C. Health Department show examples of health conditions in Census Tract #60, which includes Project Area B, as compared to the District of Columbia as a whole.

Death Rates From All Causes per 1,000 Population, For Census Tract #60 and the District of Columbia For the Years 1949, 1950, and 1951

Year	Census Tract #60	District of Columbia
1949	12.8	9.5
1950	17.3	10.5
1951	15.6	10.1

Death Rates From Tuberculosis per 100,000 Population, For Census Tract #60 and the District of Columbia For the Years 1949, 1950, and 1951

Year	Census Tract #60	District of Columbia
1949	118.0	52.4
1950	136.0	50.6
1951	83.7	35.5

Death Rates From Syphilis per 100,000 Population, For Census Tract #60 and the District of Columbia For the Years 1949, 1950, and 1951

Year	Census Tract #60	District of Columbia
1949	33.7	12.2
1950	10.5	9.2
1951	41.8	7.1

[fols. 119-165] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

OPPOSITION TO MOTION OF DEFENDANTS TO DISMISS OR IN THE ALTERNATIVE FOR SUMMARY JUDGMENT AND CROSS-CLAIM FOR SUMMARY JUDGMENT—Filed May 21, 1953

Plaintiff opposes the motion of defendants to dismiss the above captioned cause or in the alternative to grant a summary judgment, and moves the Court for a summary judgment, and for reason states that there is no dispute as to any material facts and plaintiff is entitled to judgment as a matter of law.

James C. Toomey, Attorney for Plaintiff, Toomey & Mehler, 428 Barr Building, Washington 6, D. C.

CERTIFICATE OF SERVICE (omitted in printing)

[fol 166] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil Action No. 5791–'52

GOLDIE SCHNEIDER, Plaintiff,

v.

DISTRICT OF COLUMBIA, ET AL.

Civil Action No. 476-53

MAX R. MORRIS, Plaintiff,

v.

THE DISTRICT OF COLUMBIA REDEVELOPMENT LAND AGENCY, ET AL.

Before PRETTYMAN, Circuit Judge, and CURRAN and KEECH, District Judges, sitting as a statutory three-judge court

OPINION—Filed November 5th, 1953

PRETTYMAN, *Circuit Judge:* These are two civil actions, consolidated, in which the constitutionality of the District

of Columbia Redevelopment Act of 1945[1] is challenged. The defendant Government bodies and officials filed motions to dismiss or, in the alternative, for summary judgment. Affidavits, with exhibits attached, were annexed to the motions. The plaintiffs filed cross-motions for summary judgment.

The plaintiffs are the owners of properties, one at 712 and the other at 716 Fourth Street, Southwest, both in the District of Columbia. One property is a department store [fol. 167] owned and operated by the plaintiff Morris, and the other property is a retail hardware store owned and operated by the plaintiff Schneider. The defendants are the members of the District of Columbia Redevelopment Land Agency, that Agency itself (a corporation), the members of the National Capital Park and Planning Commission (called in this statute the "Planning Commission"), the members of the Board of Commissioners of the District of Columbia, and the District of Columbia, a municipal corporation. The properties of the plaintiffs are located within the boundary lines of an area known in this litigation as "Project Area B".

This is the first project undertaken under the Redevelopment Act. The Planning Commission first published a Comprehensive Plan for the whole District of Columbia. Then it prepared a "Land Use Plan" for an area called the "Southwest Survey Area", which includes almost the whole of Southwest Washington. That plan, the Commission report says, "includes the Commission's proposals for the distribution of the basic land uses in the Survey Area, the population to be accommodated, the proportions of different housing types and the amount of low-rent housing which should be provided." The report recites as two of the principal proposals for the survey area:

> "1. That the area continue to house about the same number of families.
>
> "2. That the plan induce balanced and protected residential neighborhoods for all income groups, with approximately one-fourth of the housing designated for low-income families."

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[1] 60 Stat. 790, D. C. Code § 5-701 *et seq.* (1951).

The locations of other survey areas have been prepared by the Commission, one a Northwest Survey Area and one a Southeast Survey Area. Out of the Southwest Survey Area the Commission selected a part, to be known as Project Area B, for the first redevelopment project. This is what [fol. 168] is now before us.

The proposal of the Commission was approved by the Board of Commissioners of the District of Columbia. Thereafter the Planning Commission adopted a redevelopment plan for the area. The Land Agency made a detailed survey, using techniques considered standard by public authorities. A total of 1345 dwelling units in 1006 structures in the area housed a population of 5012. The survey indicated that 57.8 per cent of the dwellings depended upon outside toilets, 60.3 per cent had no "baths", 82.2 per cent no wash basins or laundry tubs, 29.3 per cent no electricity, and 83.8 per cent no central heating. The survey indicated that 64.3 per cent of the dwellings in the area were beyond repair and 18.4 per cent needed some major repairs.

After a public hearing the Commissioners approved the proposed redevelopment plan, and the Planning Commission certified it to the Land Agency for execution. Having obtained the necessary funds for preliminary steps from the Federal Housing and Home Finance Administrator, the Land Agency advertised for proposals to negotiate for the purchase or lease of land in the project area. After due consideration the Agency accepted the proposals of five bidders who owned property in the area (Safeway Stores, Inc., Martin Wiegand, Inc., Eagle Transfer Company, Max Greenwald, and Rudderforth Brothers), each to repurchase its present property, and of the Bush Construction Company for the remainder of the area.

The boundary of the project area is a line beginning at South Capitol and Eye Streets, running west to Fourth Street, north on Fourth Street, around Lots 89 and 90 in Square 541; thence further north on Fourth Street, around Lot 70 in Square 497; thence west along H Street, around Lot 43 in Square 497; thence east along G Street back to Fourth Street to the rear of lots facing on Fourth Street; [fol. 169] thence north 95.75 feet, east 3 feet, north 16 feet, east 25 feet, north 150 feet, west 25 feet, north 61.75 feet to the south line of F Street; thence east along F Street 25

feet, north 282 feet, around Lot 16 in Square 538; thence east along E Street to the property line of the P. B. and W. railroad; thence along that boundary to South Capitol Street and to the point of beginning. From this described boundary five lots owned by the trustees of the Friendship Baptist Church were eliminated.

In an affidavit the Director of Public Health for the District of Columbia characterizes Project Area B as a slum area "characterized particularly by the lack of those things which make for a good community." Attached to his affidavit are statistics of the Bureau of Vital Statistics of the District Health Department for Census Tract No. 60, within which Project Area B lies, being about one-half the residential-commercial area in the Tract. The figures for the year 1951 are:

	Census Tract No. 60	Entire District of Columbia
Death Rates Per 1000 Population	15.6	10.1
Death Rates from Tuberculosis Per 100,000 Population	83.7	35.5
Death Rates from Syphilis Per 100,000 Population	41.8	7.1

The redevelopment plan for Project Area B (a copy of which was attached as Appendix E to the affidavit of the Assistant Secretary of the Planning Commission) shows that the land use allocations designated in the plan are:

	Per Cent
Residential	31.6
First Commercial	5.1
Second Commercial	6.7
Public Uses	15.3
Expressway	18.5
Streets	22.8

The plan provides for from 750 to 900 dwelling units, of which from 40 to 50 per cent are to be row houses and two-[fol. 170] story flats and from 50 to 60 per cent are to be apartment houses. The maximum densities (that is, the number of dwelling units per net acre) are to be 25 row

houses, 40 in two-story flats, and 43.5 in apartment houses. The need for accommodations is recited in the plan to be the following for different sizes of families: 30 per cent of the accommodations for families of two, 25 per cent for families of three, 20 per cent for families of four, 20 per cent or families of five, and 5 per cent for families of six or more. Accordingly it is provided that at least 60 per cent of the total dwelling units shall have two bedrooms or more and at least 20 per cent three bedrooms or more. The plan requires that not less than one-third of the dwelling units in the area shall be low-rent units, which means that the maximum rental shall be $17.00 per room per month, excluding utilities. The plan provides for off-street parking space and enclosed play space. It provides that the instruments of lease or sale shall include a condition that the use of the land in the area shall conform to the redevelopment plan.

The full texts of the pertinent sections of the Redevelopment Act are attached as an Appendix. They can be summarized. Congress declared it to be a matter of legislative determination that, owing to technological and sociological changes, obsolete layout, and other factors, conditions existing in the District of Columbia with respect to substandard housing and blighted areas are injurious to the public health, safety, morals and welfare. It declared that control by regulatory processes has proved inadequate and insufficient. It declared that in its judgment it is necessary to acquire property by gift, purchase, or the use of eminent domain to effectuate the discontinuance of the use for [fol. 171] human habitation of substandard dwellings and of buildings in alleys of blighted areas, and that it is necessary to modernize the planning and development of such portions of the District. Procedure under the Act is divided between two governmental agencies. The Planning Commission is directed to make a general plan for the District of Columbia which will serve as a guide of development within which various project areas may be planned. That Commission is authorized to adopt boundaries for a "project area". Such an area is defined as an appropriate unit of redevelopment planning. "Redevelopment" is defined to mean replanning, clearance, redesign and rebuilding of project areas. "Substandard housing conditions" is defined to

mean conditions obtaining in connection with the existence of housing accommodations for human beings which, because of lack of sanitary facilities, ventilation or light, or because of dilapidation, overcrowding, faulty interior arrangement, or any combination of these factors, are in the opinion of the Commissioners detrimental to the safety, health, morals, or welfare of the inhabitants of the District of Columbia. The Commission is authorized to adopt a redevelopment plan for the area, which shall contain a site and use plan, specifications of standards of population density and building intensity, and, by specification of maximum rentals or otherwise, the amount or character of any low-cost housing for which the area is to be redeveloped. A project area redevelopment plan must be approved by the Commissioners of the District of Columbia. Thereafter the plan is to be certified to the Land Agency, a body of five members created for the purposes of this statute. To further the redevelopment of blighted territory and the prevention, reduction or elimination of blighting factors or causes of blight, the Agency is authorized to acquire the land in the area by purchase, gift, or eminent [fol. 172] domain. For this purpose the Agency is authorized to bring condemnation proceedings. After the acquisition of title to the property the Agency is to transfer to the United States or the District of Columbia these pieces which are to be devoted to public uses (other than public housing), and the Agency is authorized to lease or sell the remainder of the project area to a redevelopment company or an individual or partnership, or to sell or lease parts of the area separately. While the Agency is given power to determine the terms of a lease or sale, it is required to provide that the lessee or purchaser shall carry out the approved redevelopment plan. The statute requires that, prior to approval by the District Commissioners of the redevelopment plan, they must satisfy themselves that housing is available at rents within the reach of the low-income families to be displaced from the project area. The District agencies are authorized to secure financial aid under Title 1 of the Federal Housing Act of 1949. The Redevelopment Agency is authorized to borrow money either from the Housing Administrator or from private sources as contemplated by that statute.

The critical features of the statute are: (1) It is premised upon the phrase which is the traditional definition of the police power—public health, safety, morals and welfare. (2) Congress declared the policy of the United States to be to protect the welfare of the inhabitants of the District by eliminating conditions injurious to the public health, etc. (3) Congress declared that the acquisition of real property and the leasing or sale thereof pursuant to a project area redevelopment plan is a public use. (4) The phrase "substandard housing conditions" is defined, but the phrase "blighted area" is not specifically defined. (5) For the purpose of preventing, reducing or eliminating "blighting [fol. 173] factors or causes of blight" Congress authorized the acquisition of the title to the real estate by condemnation proceedings under the power of eminent domain. (6) Congress provided for the lease or sale of the property in a project area to private persons. (7) The uses to which the property, having been sold, could be put by the purchaser were limited, in that such uses must conform to the redevelopment plan. (8) Congress required that the District Commissioners, prior to approval of any redevelopment plan, should be satisfied that adequate housing is available to the low-income families to be displaced.

The plaintiffs say that the Redevelopment Act itself is unconstitutional on two grounds, (1) that it authorizes the taking by eminent domain of the fee title to private property and the sale or lease of that title to other private persons for private uses; and (2) that the statute authorizes the taking of property in "blighted areas" without defining that term and thus fails to establish any standard sufficiently definite to sustain the delegation of power. They also say that the statute is unconstitutional in its application to the properties of the plaintiffs, which are commercial properties; that the statute should be construed strictly and, as thus construed, does not apply to commercial property or to any property upon which slum conditions do not exist. The respondent Government agencies and officials say that the Act is constitutional, that the constitutionality of statutes similar in all substantial respects to the local statute has been sustained by the highest courts of many states and by the Supreme Court of the United States; that the elimination of slum areas, injurious to the public health,

safety, morals and welfare, is a public purpose; that the condemnation of title to the property in the entire Project Area B is incidental and essential to the elimination of the [fol. 174] slum area; that, since Congress has declared the condemnation of fee title to this property, the courts are without power to disturb that declaration; that Congress has validly delegated to the administrative agencies the power to determine the boundaries of a redevelopment area project.

We can quickly dispose of the case in so far as it relates to certain parts of the property in the project area. The power to acquire by eminent domain property to be devoted to streets (including the "expressway"), schools, recreation centers, parks (including the "greenway"), and other "public uses" is established beyond question. Likewise the power to acquire by eminent domain real estate to be used for the construction of low-cost housing is established in this jurisdiction by *Keyes* v. *United States*.[2] Our problem concerns the remainder of the property in the area, which is to be acquired by eminent domain and sold or leased to private persons for private uses, with the provision that not less than one-third of the housing accommodations to be built on the property are to be for low-rent housing.

We can at once eliminate from consideration the possibility that the redevelopment plan for Project Area B is a low-rent housing project. In specifying that one-third of the dwellings be for low rent, the redevelopment plan specifically says:

> "With the well-known scarcity of low-rent housing throughout the city there will undoubtedly always be tenants for this type of property. More low-rent units would be economically feasible but it was not deemed desirable to have too high a proportion of one economic group concentrated in one area."

We also dispose at once of plaintiffs' contention that the application of the Act to commercial properties is without due process of law because not authorized by the

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[2] 73 App. D. C. 273, 119 F. 2d 444 (1941), *cert. denied*, 314 U. S. 636, 86 L. Ed. 510, 62 S. Ct. 70 (1941).

[fol. 175] Act. The Act applies alike to all properties which meet the conditions laid down in it. It[2] authorizes the acquisition by condemnation of "real property" for the purpose of the Act and defines "real property"[4] without differentiation between kinds.

At the beginning of our consideration we note some opinions of the United States Supreme Court which are cited to us and which have dealt with the boundaries of the power of eminent domain. The basic case is *Fallbrook Irrigation District* v. *Bradley*.[5] The case involved an irrigation act of the State of California, and the question was whether the construction of irrigation works is a public purpose. The California statute and the highest court of the State had declared it to be a public purpose. The Supreme Court of the United States held that, while the conclusions by the legislative and judicial branches of the state government are not conclusive and binding, the answer to the question frequently and largely depends upon the facts and circumstances surrounding the particular subject matter. It held that the people of California must be more familiar with such circumstances in that State than any stranger could be and that because of this familiarity the declarations of the people, legislature and courts of California must be treated with very great respect. The Court held if irrigation of lands were not a public purpose no general scheme of irrigation could be formed or carried into effect, because without the power to take property by condemnation it would be impossible to acquire the necessary land. The Court held that this fact, while not conclusive, was a most [fol. 176] important consideration, because otherwise millions of acres otherwise cultivable would be left in their arid and worthless condition. Taking all the facts into consideration the Court concluded that "the irrigation of really arid lands is a public purpose."[6] The Court further held that, since the question as to what land should be subjected to irrigation was one of fact, the decision of the

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[3] 60 Stat. 793 (1946), D. C. Code § 5-704 (1951).

[4] 60 Stat. 792 (1946), D. C. Code § 5-702(m) (1951).

[5] 164 U. S. 112, 41 L. Ed. 369, 17 S. Ct. 56 (1896).

[6] *Id.*, 164 U. S. at 164, 41 L. Ed. at 390.

legislature, or its delegated agent, upon that question was, in the absence of actual fraud or bad faith, conclusive.

In *Clark* v. *Nash*[7] the Court applied the doctrine of the *Fallbrook* case to an irrigation project in the State of Utah, although the project, authorized by a State statute, was the condemnation of land by an individual for the purpose of irrigating his own land. The Court was careful to caution that the decision did not approve a general rule that private property might be taken in any case to promote the public interest; the decision was based upon the particular facts of the case, involving peculiarities of the use of water in the arid and mountainous states of the West and a recognition that differences in climate and soil rendered necessary different rules in different states. *In Strickley* v. *Highland Boy Gold Min. Co.*[8] the Court applied the doctrine of *Clark* v. *Nash* to the condemnation of a right-of-way by a mining corporation for an aerial bucket line across a placer mining claim. The Court held that, in view of the conditions respecting mining in the State of Utah and the findings of the State authorities upon the necessity, it would not say that those authorities were wrong, that in such unusual cases [fol. 177] the Fourteenth Amendment did not prevent a state from requiring concessions from private individuals. In *Hairston* v. *Danville & W. Ry.*[9] the Court applied the doctrine of the three cases we have discussed to the condemnation of land for a spur railroad track and concluded that upon the facts of the case, and certain testimony in particular, the use involved was clearly public.

Joslin Co. v. *Providence*[10] dealt with the condemnation of land for the construction of a city water supply system, undoubtedly a public use. The opinion is pertinent here because the Court laid down the rule, citing a line of cases, that, public purpose having been established, the necessity of condemning property for that use is a legislative question and not a judicial question. In *Rindge Co.* v. *Los Angeles*,[11] decided the same day, the Court applied the same

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[7] 198 U. S. 361, 49 L. Ed. 1085, 25 S. Ct. 676 (1905).
[8] 200 U. S. 527, 50 L. Ed. 581, 26 S. Ct. 301 (1906).
[9] 208 U. S. 598, 52 L. Ed. 637, 28 S. Ct. 331 (1908).
[10] 262 U. S. 668, 67 L. Ed. 1167, 43 S. Ct. 684 (1923).
[11] 262 U. S. 700, 67 L. Ed. 1186, 43 S. Ct. 689 (1923).

rule, making clear, by sharply dividing the opinion, that the nature of a use, whether public or private, is ultimately a judicial question, but that the public necessity of taking particular property for that use is a legislative and not a judicial question and may be delegated by the legislature to public officials.

This brings us to *Brown* v. *United States*,[12] in which the opinion was delivered by Mr. Chief Justice Taft. The case involved the power of Congress to condemn land. The construction of a reservoir on the Snake River in Idaho resulted in the flooding of three-fourths of the town of American Falls. In order to provide a new site for the town, to [fol. 178] which the buildings were to be removed, the Government, having purchased part of the needed property, instituted condemnation proceedings to secure the needed remainder. The action was contested on the ground that it was not for a public use of the property. The Court held that under the peculiar circumstances of the case the acquisition of the new town site was so necessary to the irrigation project that the public use, which was the reservoir, covered the taking of the town site. The Court noted that its conclusion was not in conflict with the case dealt with in the *Opinion of Justices* in 204 Mass.[13] In that case the justices held that the City of Boston, building an improved street, had no power to condemn lots abutting the proposed street with a view to selling them thereafter for the erection of warehouses, etc., usable in private business. The Court said that the distinction between that case and the one before it was that the removal of the town of American Falls was a necessary step in the public improvement itself. The Court said flatly that the tract selected for the new site was "the only practical and available place to which the part of the town to be flooded could be moved so as to be united with the one-quarter of the old town which would be left."[14]

In *United States* ex rel. *T. V. A.* v. *Welch*[15] the question

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[12] 263 U. S. 78, 68 L. Ed. 171, 44 S. Ct. 92 (1923).

[13] 204 Mass. 607, 91 N. E. 405 (1910).

[14] *Supra*, 263 U. S. at 81.

[15] 327 U. S. 546, 90 L. Ed. 843, 66 S. Ct. 715 (1946).

was whether the power to condemn certain land had been conferred upon the Tennessee Valley Authority and, if so, whether the statute was constitutional. The reservoir created by the construction of a dam submerged a roadway which was the only means of ingress and egress for a [fol. 179] mountainous area upon which some 216 families lived. After various negotiations between the State of North Carolina, the county, the T. V. A., and the National Park Service, it was determined that the most economical and most feasible solution to the difficulty was for the T. V. A. to acquire by purchase or condemnation all the land in the isolated area and to transfer it to the National Park Service for inclusion within the Great Smoky Mountain National Park. The District Court and the Court of Appeals held that the T. V. A. had no power under the statute to condemn this land. The Supreme Court reversed. The Court said that it viewed the entire transaction, that is, the construction of the dam, the reservoir, and the acquisition of the property, as a single integrated effort. It held that the responsibilities placed on the T. V. A. were not only the building of dams but related to navigability, flood control, reforestation, marginal lands, and the agricultural and industrial development of the whole Tennessee Valley. The Court discussed the scope of the judicial power to determine what is a public use for the purposes of the Fourteenth Amendment and quoted from *Old Dominion Co. v. United States*,[16] saying that whatever may be the scope of that power the decision of Congress "is entitled to deference until it is shown to involve an impossibility." The Court held that the T. V. A. took the tracts for a public purpose. The cited case, *Old Dominion Co. v. United States*, involved the condemnation of land upon which the United States had built warehouses for the Quartermaster of the Army at a cost of more than $1,500,000, which the Court said "clearly were for a public use." Congress had made a specific appropriation for this land, labeling it "Sites for [fol. 180] military purposes" and "for the Quartermaster warehouses". A contention was made that the Secretary of War and his subordinates had in mind saving to the Government the cost of the buildings rather than a future

[16] 269 U. S. 55, 66, 70 L. Ed. 162, 46 S. Ct. 39 (1925).

use of the land by the Government. In that connection the Court said that the decision of Congress "is entitled to deference until it is shown to involve an impossibility."

We come, then, to the problem presented in the case at bar. It lies in three parts. 1. First, there is the slum. A slum is made up of houses (or substitutes for houses), the appurtenances thereto, and people. The houses and appurtenances are such that the people live in filth and breed disease and crime. A slum can be eliminated by tearing down the houses, destroying the appurtenances, and either building new housing on the spot for the people or moving the people away. 2. Second, there is the land upon which a slum exists. The land itself neither contributes to nor detracts from a slum. It is the same whether a slum or a model building exists upon it. The land cannot be destroyed or moved. Only its ownership and its use can be changed. If cleared, the land upon which a slum presently exists would have no harmful effects upon the public. Neither does naked ownership of land, apart from use, have any harmful public effects. A slum and the legal title to the naked land upon which it exists are separate things. 3. Third, there are sections of cities which are not at the present time used to their fullest economic possibility, or are not arranged to fit current ideas of city development. An outstanding example is Trinity Church and its surrounding cemetery at the corner of Wall Street and Broadway in New York City. Old streets are not so wide as new ones would be. Apartment houses would be more economically efficient than are single dwellings. Phrases used to describe this situation [17] are "inadequate [fol. 181] planning of the area", "excessive land coverage by buildings thereon", "defective design and arrangement of the buildings thereon", "faulty street or lot layout", "economically or socially undesirable land uses". The statutes dealing with these areas are usually called "urban redevelopment" laws. The areas are frequently called "blighted". They are in no sense slums, or similar to slums; they are out-of-date. They do not breed disease or crime;

[17] Taken from the Pennsylvania statute. Urban Redevelopment Law of May 24, 1945, P. L. 991, 35 P. S. 1701 *et seq.*

they fail to measure up to their maximum potential use in terms of economic, social, architectural, or civic desirability.

These three distinct factual situations present three distinct sets of legal questions.

I

First, we have the problem of the slum. There is no doubt concerning the power of Congress to delegate to the District Government the power to clear slums. The power lies within the well-established concepts of police power, which is the protection of the public health, safety, morals and welfare. And the Supreme Court pointed out in *District of Columbia* v. *Thompson Co.*[18] that the Congress can delegate the full of the police power to the District Government. Moreover, the clearance of a slum is a public purpose and the condemnation of improvements upon land—buildings and appurtenances—which create the hazards to health, safety, etc., is within the power of eminent domain. Since the Government can condemn such property without compensation under the police power, *a fortiori* it can condemn and pay reasonable compensation. Since there is power to condemn without compensation there is power to condemn with compensation.

[fol. 182] There have been in existence for years statutes which give the District Government condemnation power in respect to unsafe and insanitary buildings and in respect to alley dwellings.[19] If they are not sufficient to complete the advisable eliminations, Congress has ample power to correct the deficiencies.

We hold, therefore, that, so far as the District Redevelopment Act authorizes the condemnation of improvements upon land which are the creating or perpetuating causes of conditions injurious to the public health, safety, morals and welfare, as that term is used to describe breeding grounds for crime and disease, it is valid.

The problem of the slum includes not only the elimination of presently existing slums but also the prevention of fu-

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[18] 346 U. S. 100, 97 L. Ed. —, 73 S. Ct. 1007 (1953).

[19] D. C. Code §§ 103-104, 501-504, 601-607 of Title 5 (1951).

ture slums. That objective involves questions different from and more difficult than the elimination of present conditions. Prevention deals with developments which may occur in the future, not merely with conditions which exist in the present. So the problem of prevention is: What should be done with property to prevent future developments which will eventuate in slums? Regulations affecting the use of property, designed to prevent the breeding and spread of disease and crime, are within the police power and, when reasonable, are clearly valid. And it seems to us that the prevention of such conditions is a public purpose which would sustain the validity of seizure by eminent domain where the seizure is necessary for the purpose. But that conclusion poses problems. Among these problems are: Is the seizure *necessary* to the prevention of slums? Does the proposed disposition of the property after seizure reasonably serve the purpose of prevention? Perhaps the problem is more vividly phrased [fol. 183] this way: If no slum exists, either because none has ever existed at that place or because an existing slum has been cleared, may the Government seize property in order to prevent the future development of a slum? Practical questions are immediately obvious. Why is such a drastic step by the Government necessary or appropriate to prevent a future slum on a certain parcel of land? Will the proposed disposition of the property prevent slum conditions from occurring on it? The buildings, appurtenances, etc., which constitute the slum itself are usually simply destroyed. The puzzling questions relating to slum prevention, therefore, relate more directly to the title to the land than they do to the ownership of the improvements. We therefore discuss the matter in more detail in the next section of this opinion.

II

Second, we have the problem of the title to the land upon which a slum now exists. Can the Government seize title to land from which a slum has been or could be cleared, and sell it to a private person for private uses? If the land is to be devoted to schools, roads, parks and such, or to public housing, or to needed low-cost housing, it is to be devoted to a public use, and so its seizure under the power

of eminent domain is clearly authorized. But, if the sale subsequent to the seizure is to a private person for a purely private use—such, for example, as apartment houses, stores or theaters—the validity of the seizure of the title is a different problem.

The traditional definition of the power of eminent domain is in terms of public use. It contemplates the use to which the property is to be put after it has been taken. Illustrations are those we have just mentioned, the taking of prop- [fol. 184] erty for schools, streets, parks, etc. But the term "public use" has progressed as economic facts have progressed, and so projects such as railroads, public power plants, the operation of mines under some conditions, and, more recently, low-cost housing have been held to be public uses for which private property may be seized. Moreover, the traditional concept of use as the keystone of eminent domain has been enlarged in modern thought and cases. We find it described as public purpose. The variation in the term from "use" to "purpose" indicates a progression in thought. The idea is that the taking itself, as distinguished from the subsequent use of the property, may be required in the public interest. The Supreme Court has not gone far in that direction, but we think we see it indicated in the *Brown* and *T. V. A.* cases, which we have discussed. We so hold. We hold that the taking of title to real estate for the public purpose of eliminating or of preventing slums is within the power of eminent domain, even though the use to which the property is put after seizure is not a public use; provided (1) that the seizure of the title is necessary to the elimination of the slum or (2) that the proposed disposition of the title may reasonably be expected to prevent the otherwise probable development of a slum.

These extensions of the concept of eminent domain, to incompass public purpose apart from public use, are potentially dangerous to basic principles of our system of government. And it behooves the courts to be alert lest currently attractive projects intpinge upon fundamental rights. The reasoning upon the point begins with the basic concept of natural rights and of property as one of those rights. To secure those rights governments were instituted, says the Declaration, and to secure them governments may

[fol. 185] impose limitations upon them; moreover, by clear implication the Fifth Amendment authorizes the taking of private property for public use. But here is the end of government power. That the Government may do whatever it deems to be for the good of the people is not a principle of our system of government. Nor can it be, because the ultimate basic essential in our system is that individuals have inherent rights, and as to them the powers of government are sharply limited. There is no general power in government, in the American concept, to seize private property. Hence it is universally held [20] that the taking of private property of one person for the private use of another violates the due process of law clauses of the Fifth and Fourteenth Amendments. The reasoning which applies to this right is the same as that which applies to other rights guaranteed by the Constitution. Congress can suppress free speech if a clear and present danger necessitates it, but the suppression can go only as far as the necessity. In these principles lies one of the critical differences between our system of government and the totalitarian systems.

The restriction of the power of seizure to the necessities of the public use or purpose is clearly taught by the Supreme Court in *Brown* v. *United States, supra.* As we have already pointed out, the Court explicitly noted that its decision was not in conflict with the Massachusetts case [21] in which the justices held that, while the power of eminent domain permitted the seizure of property necessary to [fol. 186] widen a street, it did not permit the seizure of abutting property for the purpose of reselling it for private uses. Mr. Justice Brandeis said in *Thompson* v. *Consolidated Gas Co.*,[22] "And this Court has many times warned

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[20] A chain of study could begin with Missouri Pacific Ry. v. Nebraska *ex rel.* Board of Transportation, 164 U. S. 403, 417, 41 L. Ed. 489, 495, 17 S. Ct. 130 (1896). Many treatises have been written upon it. See, *e. g.*, Cooley, Constitutional Limitations 1124 *et seq.* (8th ed. 1927); Mott, Due Process of Law, pt. 9, c. 21 (1926); 1 Nichols, Eminent Domain § 4.7 *et seq.* (3d ed. 1950).

[21] Opinion of Justices, *supra* note 13.

[22] 300 U. S. 55, 80, 81 L. Ed. 510, 57 S. Ct. 364 (1937).

that one person's property may not be taken for the benefit of another private person without a justifying public purpose, even though compensation be paid."[23] We do not understand the *T. V. A.* case, *supra*, to repudiate this principle. Rather it affirmed it. The Court, after examining the facts and the statute, held the taking to be for a public purpose; it did not hold that T. V. A. might seize property beyond the public need. "When the need arises," said the Court, "individuals may be required to relinquish ownership of property * * *."[24]

The rule is laid down in *Pennsylvania Mut. Life Ins. Co.* v. *City of Philadelphia*,[25] decided by the Supreme Court of Pennsylvania and cited with approval by that court in *Belovsky* v. *Redevelopment Authority*.[26] It held invalid an act authorizing the seizure and resale of property abutting a public park merely for the purpose of protecting the parkways and "the preservation of the view, appearance, light, air, health, or usefulness thereof."

In the *Muller* case[27] the Court of Appeals of New York said:

> [fol. 187] "Whenever there arises, in the state, a condition of affairs holding a substantial menance to the public health, safety, or general welfare, it becomes the duty of the government to apply whatever power is necessary and appropriate to check it. There are differences in the nature and characteristics of the powers, though distinction between them is often fine. * * * But if the menace is serious enough to the public to warrant public action and the power applied is reasonably and fairly calculated to check it, and bears a reasonable

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[23] And see Kohl v. United States, 91 U. S. 367, 23 L. Ed. 449 (1876); Cincinnati v. Vester, 281 U. S. 439, 74 L. Ed. 950, 50 S. Ct. 360 (1930); Salisbury Land & Improvement Co. v. Commonwealth, 215 Mass. 371, 102 N. E. 619 (1913).

[24] *Supra*, 327 U. S. at 554-555.

[25] 242 Pa. 47, 88 Atl. 904 (1913).

[26] 357 Pa. 329, 54 A. 2d 277 (1947).

[27] New York City Housing Authority v. Muller, 270 N. Y. 333, 1 N. E. 2d 153, 155 (1936).

relation to the evil, it seems to be constitutionally immaterial whether one or another of the sovereign powers is applied."

We are of opinion that title to real estate cannot be seized by the Government merely because a slum presently exists upon the land. Some further necessitous circumstance must exist to validate such a seizure. It must be either that the clearance of the slum is impracticable without taking the title to the land or that proposed restrictions which can be imposed only through the medium of a resale are fairly calculated to prevent recurrence of slum conditions. Ordinarily the seizure of the fee title to land would seem to be neither necessary nor reasonably incidental to the clearance of a slum. But we readily see that there could be circumstances—such, for example, as an obdurate landlord or an impoverished homeowner— in which the seizure of the title, with compensation therefor, ought in reason accompany the condemnation of the buildings. Valid seizure for prevention purposes frequently occurs when the changing of a neighborhood from residential to manufacturing, maritime, or major commercial leaves a remnant of housing accommodations which nurture slum conditions and which ought to be removed to permit other uses.[28]

Whether the taking of a certain piece of property is necessary for a certain public use or purpose is initially and almost wholly a legislative question. But like every other legislative determination it is subject to the Constitution. Congress itself could not deprive a person of his [fol. 188] property without due process of law. It is the duty of the courts, when a legislative act is challenged as violative of the Constitution, to determine that issue. Indeed it is for that specific purpose that this three-judge court is assembled by direct and specific authorization of Congress. Judicial consideration of the validity of a legislative decision that a particular property be seized for a public purpose is not farther removed from judicial inquiry than is the validity of a statute. As Mr. Justice Bur-

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[28] See, *e. g.*, Burt v. Pittsburgh, Schenck v. City of Pittsburgh, and Foeller v. Housing Authority of Portland, *infra*.

ton pointed out in *United States* v. *Carmack*,[29] the Fifth Amendment provides an owner "with important protection against abuse of the power of eminent domain".

Just as the seizure of property by the Government is a legislative rather than a judicial question, it is also a legislative rather than an executive question. The Supreme Court made amply clear in *Youngstown Co.* v. *Sawyer*[30] that, unless there is an act of Congress which expressly authorizes seizure or from which authority to seize can fairly be implied, there is no executive power of seizure. That rule must guide us here.

In the case before us Congress made no declaration concerning the specific property involved. Its declaration concerned "conditions existing in the District of Columbia with respect to substandard housing and blighted areas". Obviously that declaration did not concern all conditions everywhere in the District. It meant certain conditions in certain places. Congress declared as a matter of legislative determination that the conditions to which it referred "are injurious to the public health, safety, morals, and welfare". Here, then, in that quoted expression is the description of [fol. 189] the conditions to which the statute is directed. Then Congress declared that to effectuate its policy of "eliminating all such injurious conditions" and "to eliminate the sustandard housing conditions and the communities in the inhabited alleys and blighted areas" acquisition of property by eminent domain is necessary. When it conferred the power of eminent domain upon the Agency it did so subject to the "conditions" of the Act and "for that purpose", *i. e.*, for the redevelopment of "blighted territory" and the prevention and elimination of "blighting factors or causes of blight".

With those limitations Congress delegated to executive officials the authority to determine what properties should be seized. Of course it could do so, provided the required tests, established long ago, are met. The tests are: The purpose for which the property is to be seized must be a public purpose; the seizure must be for the declared purpose; and the act of delegation must be sufficiently explicit to enable

[29] 329 U. S. 230, 236-237, 91 L. Ed. 209, 67 S. Ct. 252 (1946).
[30] 343 U. S. 579, 96 L. Ed. 1153, 72 S. Ct. 863 (1952).

the administrators to act with administrative power and not impinge upon legislative power, and also to enable a court to determine whether the administrators are within the congressional grant.

With these principles in mind we hold that the seizure of title to real estate upon which slums exist or upon which a slum may be foreseen would be valid under the Constitution only to the extent that the taking is reasonably necessary to the accomplishment of the asserted public purpose. We hold that the Redevelopment Act goes no further than that, that it confers upon the administrative officials power to seize property, under the limitations we have described, only for the purpose of eliminating or preventing conditions injurious to the public health, safety, morals or welfare. Thus construed, we hold the statute to be valid. We hold [fol. 190] that the necessity for the seizure of the title to a parcel of real estate involves facts and judgment, that these are essentially for the administrators, and that the function of the courts is limited to determining whether the conclusions of the administrators are within reason upon the record and within the congressional delegation of authority.

III

Third, we have the problem of the area which is not a slum but which is out-of-date, called by the Government "blighted" or "deteriorated". The Government says the statute is not limited to slum clearance but extends to what is called "urban redevelopment"; and that as thus construed the statute is valid. The word in the statute upon which the Government rests its view is "blighted", which is not defined in the statute. A hint of a meaning such as that urged by the Government is found in the phrase "backward and stagnant and therefore blighted", which appears near the end of Section 3(n) of the Act. But we have already indicated our conclusion that the more direct provisions of the statute control its scope, that it is the clearly expressed intent of the Congress to authorize in this statute the seizure of property only for the purpose of eliminating and preventing thereafter conditions injurious to the public health, safety, morals and welfare. If we did not find this meaning clear upon the face of the statute,

we would be impelled to construe it with that meaning, because otherwise the statute would be unconstitutional.

The contention as to "blight" and "urban redevelopment" would cover two possible factual situations: one where the plan is to redevelop an area in which no slums exist, and the other where the plan is to redevelop an area which the Government deems "appropriate" for redevelop-
[fol. 191] ment but upon only a part of which slums exist. We first discuss the two possibilities separately.

The hypothesis in the first phase of this consideration is an urban area which does not breed disease or crime, is not a slum. Its fault is that it fails to meet what are called modern standards. Let us suppose that it is backward, stagnant, not properly laid out, economically Eighteenth Century—anything except detrimental to health, safety or morals. Suppose its owners and occupants like it that way. Suppose they are old-fashioned, prefer single-family dwellings, like small flower gardens, believe that a plot of ground is the place to rear children, prefer fresh to conditioned air, sun to fluorescent light. In many circles all such views are considered "backward and stagnant". Are those who hold them "therefore blighted"? Can they not, nevertheless, own property? Choice of antiques is a right of property. Or suppose these people own these homes and can afford none more modern. The poor are entitled to own what they can afford. The slow, the old, the small in ambition, the devotee of the outmoded have no less right to property than have the quick, the young, the aggressive, and the modernistic or futuristic.

Is a modern apartment house a better breeder of men than is the detached or row house? Is the local corner grocer a less desirable community asset than the absentee stockholder in the national chain or the wage-paid manager? Are such questions as these to be decided by the Government? And, if the decisions be adverse to the erstwhile owners and occupants, is their entire right to own the property thereby destroyed? Even if the line between regulation and seizure, between the power to regulate and the power to seize, is not always etched deeply, it is there. And, even if we progress in our concepts of the "general
[fol. 192] welfare", we are not at liberty to obliterate the boundary of governmental power fixed by the Constitution.

The terms "public use" and "public purpose" have never been defined with precision, and cannot be. Localities, customs and times change, and with them the needs of the public may change. But even the most liberal courts have put boundaries upon the meanings. One eminent authority [31] sums up the matter by saying that the courts which go furthest in sustaining the power of eminent domain hold that "anything which tends to enlarge the resources, increase the industrial energies, and promote the productive power of any considerable number of the inhabitants of a section of the state, or which leads to the growth of towns and the creation of new resources for the employment of capital and labor" constitutes a public use. We think so unqualified a definition cannot be sustained, because every factory or mercantile house of any size meets that definition to some degree, and most certainly the Government has not an unrestricted power to seize one man's property and sell it to another for the building of a factory or a store. The decisions of the courts which used such sweeping language and which are cited to us fall far short of supporting the contention made to us in the present case. We shall discuss them in a moment.

It is said that the established meaning of eminent domain includes measures for the "general welfare" and that new social doctrines have so enlarged the concept of public welfare as to include all measures designed for the public benefit. The difficulty lies somewhat in the unqualified philosophical declaration, but it lies more in the practicality that some person or persons must determine, if that be the rule, what is the public benefit. Therein lies the insuperable obstacle, in the American view. There [fol. 193] is no more subtle means of transforming the basic concepts of our government, of shifting from the preeminence of individual rights to the preeminence of government wishes, than is afforded by redefinition of "general welfare", as that term is used to define the Government's power of seizure. If it were to be determined that it includes whatever a commission, authorized by the Congress and appointed by the President, determines to be in the interest of "sound development", without definition

[31] 2 Nichols, Eminent Domain § 7.2 *et seq.* (3d ed. 1950).

of "sound development", the ascendancy of government over the individual right to property will be complete. Such ascendancy would logically follow over the rights of free speech and press, it seems to us.

We are of opinion that the Congress, in legislating for the District of Columbia, has no power to authorize the seizure by eminent domain of property for the sole purpose of redeveloping the area according to its, or its agents', judgment of what a well-developed, well-balanced neighborhood would be; lest this sentence be misconstrued out of context, we repeat our hypothetical assumption for the purposes of this first phase of Section III of our opinion that no slum exists on the hypothetical property or in the area and that the seizure is not for a public use.

But the Government rests the present case upon a narrower basis. And this brings us to the second phase of the problem posed in this section of the opinion. This concerns a situation where the plan is to redevelop an area upon only a part of which slums exist. The state cases hold, the Government says, that "where from a comprehensive standpoint there is a *public benefit*, such as slum clearance, flowing from the project, the taking is for a public use regardless of the ultimate disposition of the particular piece of property." The Government says that it has determined that Project Area B in the case at bar is an appropriate area [fol. 194] for "redevelopment", that slums exist in that area, and that therefore it may seize the title to all the land in the area and, having replanned it, sell it to private persons for the building of row houses, apartment houses, commercial establishments, etc. In essence the claim is that if slums exist the Government may seize, redevelop and sell all the property in any area it may select as appropriate, so long as the area includes the slum area. This amounts to a claim on the part of the authorities for unreviewable power to seize and sell whole sections of the city.

We think, as we have indicated, that the Redevelopment Act does not contain so broad an authorization. But, if it did so, it would be invalid from two viewpoints. In the first place, a public purpose must be the reason for the seizure of private property, not merely the excuse for the seizure. There must be a necessity for the taking in order to accomplish the public purpose. The rule governing the seizure

of property geographically unnecessary to slum clearance is the same as that governing the unnecessary seizure of title to land upon which a slum exists, which rule we have already discussed. In the second place, the Redevelopment Act does not contain standards sufficiently definite to sustain the validity of an authorization as broad as that claimed. "Blight" is not defined in the statute. No standard other than "substandard housing" is defined. We are not told where we may ascertain what a proper land coverage would be, or a building arrangement without defect, or a street layout without fault, or what is desirable economic use or even socially desirable use of land, or what is "backward" or "stagnant", or what is "sound development". These criteria for seizure would be formulated on a case-by-case basis.

[fol. 195] The inadequacy of the statutory prescriptions is demonstrated by the proposed boundary lines of Project Area B. We have in the statute no measuring means by which to tell why one property on Fourth Street is to be seized, or can be seized validly, while another property on the same side of the same block, or across the street, or in the next block is not included in the area to be condemned. Congress cannot confer undescribed authority to regulate a business; *a fortiori* it cannot confer undefined power to seize in full ownership businesses and properties.

The Government cites the recent redevelopment cases in the state and federal courts. The state cases are far too numerous to discuss in detail, but study shows that they deal with low-cost housing projects, with solutions for acute conditions affecting some major feature of the life of the city, or with slum clearance alone. The *Foeller* case[32] is an example of an exhaustive study, with many citations of authority. It involved an area in the waterfront district of Portland, Oregon, where dwellings remained scattered among the commercial and industrial establishments as those establishments increased in number and the residential areas retreated from them. This inevitably created slums. Moreover, if the old houses were removed and new ones built in the same locations, slum conditions would al-

[32] Foeller v. Housing Authority of Portland, 256 P. 2d 752 (Ore. 1953).

most certainly return. Housing accommodations in the midst of the smoke, fumes, noise, and fire hazards of maritime and industrial activity naturally and usually retrogress to slums. At the same time, commercial, industrial and maritime activity is the lifeblood of Portland. The redevelopment plan was to take over the titles to these dwellings and the small neighborhood business properties and to resell them with provisions, inserted in the title instruments [fol. 196] to run with the land, that the property be used thereafter for commercial and industrial purposes only. Here was a vigorous, somewhat drastic attack upon an acute public problem. The seizure and resale of the properties, grouped to permit use for other than dwellings, was a clear method of serving two purposes, (1) to prevent the recreation of slums and (2) to enlarge the potential activity upon which the city lived. The Supreme Court of Oregon, in an exhaustive opinion, stressing and emphasizing the features of the factual situation, upheld the statute.

The same sort of condition existed in the *Schenck* case.[33] The project area was the heart of the downtown commercial area of Pittsburgh. The growth of the city from a small town on the triangle between the two rivers left village streets to serve the needs of a great commercial metropolis, and dwellings remained in the district. Inevitably slums arose in those dwelling conditions. The proposed redevelopment plan was to take those properties, build a great park, replat the streets, and erect three 18-story office buildings. Here again were two purposes, the conclusive prevention of a return of slums to this area and the enlargement of the activity upon which the economic life of the public depended. The Supreme Court of Pennsylvania upheld the plan, and the federal courts did likewise.

In *Zurn* v. *City of Chicago*[34] a different problem was presented. The statute there involved, the Supreme Court of Illinois said, "is purely an act for slum clearance and rehabilitation of slum and blight areas", and again it said,

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[33] Schenck v. City of Pittsburgh, 364 Pa. 31, 70 A. 2d 612 (1950).

[34] 389 Ill. 114, 59 N. E. 2d 18 (1945).

[fol. 197] "The sole basis for the public use is slum clearance and the rehabilitation of slum and blight areas." The court noted that "Slum and blight areas are defined in section 3 as those urban districts in which a major portion of the housing is detrimental to the health, safety, morality or welfare of the occupants by reason of age, dilapidation, overcrowding, faulty arrangement, lack of ventilation, light or sanitation facilities, or any combination of these factors."[35] Within this purpose of slum clearance the court upheld the power of eminent domain.

It is said that the Supreme Court in *Burt* v. *Pittsburgh*[36] sustained the view which the Government takes upon this phase of the matter before us. But we do not find that conclusion in that case. That controversy concerned the same problem, the same area in downtown Pittsburgh, that was considered in *Schenck, supra*. It was presented to a three-judge federal court, and that court, in a two-paragraph opinion,[37] recited (1) that the validity of the statute[38] under the constitution of the State of Pennsylvania had been upheld by the Supreme Court of Pennsylvania in two cases, citing Schenck and the *Belovsky* case,[39] and (2) that there was nothing in the complaint or in the exhibits attached thereto which indicated that the statutes themselves or the action of the constituted authorities in carrying them out violated the plaintiff's rights under the federal Constitution. Thereupon the court dismissed the complaint. The Supreme Court affirmed upon motion, without opinion, cit-
[fol. 198] ing *United States* ex rel. *T. V. A.* v. *Welch, supra*. In the latter case the Court had pointed out that it had never held invalid a state statute authorizing the taking of private property for public uses which the supreme court of the state had upheld. It must be this section of the *T. V. A.* opinion which the Court had in mind in citing the case in the *Burt* case, since the remainder of that opin-

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[35] *Id.*, 59 N. E. 2d at 23.

[36] 340 U. S. 802 (1950).

[37] Burt v. Pittsburgh, Civil No. 8706, W. D. Pa., April 25, 1950.

[38] Urban Redevelopment Law, *supra* note 17.

[39] Belovsky v. Redevelopment Authority, 357 Pa. 329, 54 A. 2d 277 (1947).

ion dealt with the constitutional powers of a federal agency under a federal statute.

In the *Belovsky* case, cited by the three-judge court in *Burt*, the Supreme Court of Pennsylvania held that the fundamental purpose of the Housing Authorities Act, which it had upheld as a slum clearance act,[40] and the Urban Redevelopment Law "was the same, namely, the clearance of slum areas",[41] and that in the Urban Redevelopment Law there was "only the one major purpose of the elimination and rehabilitation of the blighted sections".[42] The court pointed out that "the law actually requires that property be taken by eminent domain only to the extent reasonably required for the purpose for which the power is exercised".[43]

Thus the utmost held by the recent redevelopment cases is that meeting a compelling community economic need is a public purpose. That is the doctrine of the early Supreme Court cases, such as *Fallbrook*, *Clark* v. *Nash*, and others, *supra*. We do not depart from the thesis of those decisions.

In *People of Puerto Rico* v. *Eastern Sugar Associates*[44] the Court of Appeals for the First Circuit considered a [fol. 199] statute of the insular legislature which embodied a far-reaching program of agrarian reform designed to remedy desperate economic conditions existing in the Islands. The act authorized the seizure of large holdings of land used for the raising of sugar, especially that owned by corporations, and the redistribution of the land to individuals in small parcels. The court based the validity of the statute upon the public necessity for solution of the general and acute conditions and upon its conclusion that the statute was "reasonably calculated to deal with these problems." The essence of the opinion conforms to the other decisions we have discussed.

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[40] Dornan v. Philadelphia Housing Authority, 331 Pa. 209, 200 Atl. 834 (1938).

[41] *Supra*, 54 A. 2d at 281.

[42] *Id.* at 282.

[43] *Id.* at 283.

[44] 156 F. 2d 316 (1946), *cert. denied*, 329 U. S. 772, 91 L. Ed. 664, 67 S. Ct. 190 (1946).

The Government cites cases dealing with such problems as the selection of post-office sites,[45] and the authority of administrative officials to make such selections. They are not pertinent here. The United States has undoubted power to establish post offices, and the use is a public use. The site merely involves a comparative judgment. The question before us concerns power.

Legal support for the Government's position is sought in the authorities upholding the validity of zoning. But we know of no zoning law which provides that, if one's property, now to be in a residential zone, has been used in the past for commercial purposes, its ownership is forfeit. Moreover the power to zone is sharply restricted. The Supreme Court said in *Nectow* v. *Cambridge*,[46] cited in *Devereux Foundation* v. *Lea:*[47]

> "The governmental power to interfere by zoning regulations with the general rights of the land owner by restricting the character of his use, is not unlimited, and other questions aside, such restriction cannot be imposed if it does not bear a substantial relation to the [fol. 200] public health, safety, morals, or general welfare. *Euclid* v. *Ambler Co., supra* [272 U. S.], p. 395."

And in *Seattle Trust Co.* v. *Roberge*[48] the Court said: "Zoning measures must find their justification in the police power exerted in the interest of the public."

This brings us to consider the redevelopment plan before us. It covers about fifteen square city blocks. It lies within a Census Tract in which slum conditions are said to exist, and it contains properties upon which slum conditions are said to exist. Its western boundary is an irregular line which runs around lots, encompasses some establishments along a street and excludes others on the same side of the same street, moves from east to west as it runs north. It excludes certain properties, and under it certain other properties would be sold back to the present owners

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[45] *E. g.*, United States v. Carmack, *supra*.

[46] 277 U. S. 182, 188, 72 L. Ed. 842, 48 S. Ct. 447 (1928).

[47] 326 U. S. 686, 90 L. Ed. 403, 66 S. Ct. 89 (1945).

[48] 278 U. S. 116, 120-121, 73 L. Ed. 210, 49 S. Ct. 50 (1928).

or be retained by them. The key to the plan, apart from slum clearance, is the opinion of the Government authorities that residential neighborhoods should be "well-balanced" and that the area should contain housing for all income groups. The plan points out that "redevelopment" will inevitably raise the average income level and make it possible to introduce housing for higher-income families at a later stage in the program. It says that generally the Southwest area "should be predominantly a moderate to lower-income area". The recommendations as to the percentages of the types of accommodations to be built in the area are said to be "based upon a conservative analysis of the present local real estate market." The plan says: "The purpose of redevelopment is to clear the slums and replace them with that pattern of land use most appropriate to the overall development of the community."

[fol. 201] No acute housing shortage is to be met. In fact the plan provides for no more residents than presently occupy the area. No pressing economic condition, apart from the slums, is sought to be dealt with by this plan. No purpose of housing for the needy—low-rent housing—is the motivation. No rearrangement of streets is contemplated or provided. The streets throughout Project Area B are exactly the same as are the streets in all parts of the District of Columbia, lettered streets running east and west and numbered streets running north and south, in continuous lines across the entire District. The plan provides that certain streets shall be widened somewhat and that an expressway and a greenway shall be built. The only restrictions to future use are the requirements as to the type of houses to be built (row, apartment, etc.) and as to the percentage of rentals for the low-income group.

In sum the purpose of the plan, in addition to the elimination of slum conditions, is to create a pleasant neighborhood, in which people in well-balanced proportions as to income may live. The Government is to determine what conditions are pleasant, what constitutes the "most appropriate" pattern of land use, what is a good balance of income groups for a neighborhood, how many poor people, how many moderately well-to-do people, how many families of two, how many of four, etc., should be provided for in

this neighborhood, and what the proper development of a community should be.

Of course the plan as pictured in the prospectus is attractive. In all probability it would enhance the beauty and the livability of the area. If undertaken by private persons the project would be most laudable. It would be difficult to think of a village, town or city in the United States which [fol. 202] a group of artists, architects and builders could not improve vastly if they could tear down the whole community and rebuild the whole of it. But as yet the courts have not come to call such pleasant accomplishments a public purpose which validates Government seizure of private property. The claim of Government power for such purposes runs squarely into the right of the individual to own property and to use it as he pleases. Absent impingement upon rights of others, and absent public use or compelling public necessity for the property, the individual's right is superior to all rights of the Government and is impregnable to the efforts of government to seize it. That the individual is in a low-income group or in a high-income group or falls in the middle of the groups is wholly immaterial. One man's land cannot be seized by the Government and sold to another man merely in order that the puchaser may build upon it a better house or a house which better meets the Government's idea of what is appropriate or well-designed.

We hold that Congress did not in the Redevelopment Act confer power to seize property beyond the reasonable necessities of slum clearance and prevention, the word "slum" meaning conditions injurious to the public health, safety, morals and welfare.

If property is seized for the purpose of eliminating or preventing slums within the limitations and in accordance with the rules we have described, the fact that it may be sold subsequently to private persons does not vitiate the validity of the seizure.

The complaints in the two actions at bar are pitched entirely upon a challenge of the constitutionality of the Redevelopment Act, and, except the issue as to commercial property, no other issue as to the application of the statute [fol. 203] to the property of plaintiffs is raised by the

pleadings. Therefore, since the statute, as we construe it, is constitutional, we must grant the motion to dismiss.

In the argument by plaintiffs' counsel in support of their motions for summary judgment, reference was made to arbitrary and capricious action by the Planning Commission in fixing the boundary lines of the Southwest Redevelopment Project Area "B" to include the plaintiffs' commercial properties, while excluding other commercial properties on the same street. This issue, however, is not raised by the pleadings. Should the pleadings be amended to include an issue as to whether or not the administrative agency has acted beyond the scope of the statute, as construed in this opinion, in including the plaintiffs' properties within the project area, the case should be heard by one judge for determination of that question.

E. Barrett Prettyman, Richmond B. Keech, Edward M. Curran.

Dated November 5, 1953.

[fol. 204] APPENDIX

60 STAT. 790 (1946), D. C. CODE § 5-701 (1951):

"It is hereby declared to be a matter of legislative determination that owing to technological and sociological changes, obsolete lay-out, and other factors, conditions existing in the District of Columbia with respect to substandard housing and blighted areas, including the use of buildings in alleys as dwellings for human habitation, are injurious to the public health, safety, morals, and welfare, and it is hereby declared to be the policy of the United States to protect and promote the welfare of the inhabitants of the seat of the Government by eliminating all such injurious conditions by employing all means necessary and appropriate for the purpose; and control by regulatory processes having proved inadequate and insufficient to remedy the evils, it is in the judgment of Congress necessary to acquire property in the District of Columbia by gift, purchase, or the use of eminent domain to effectuate the declared policy by the discontinuance of the use for human

habitation in the District of Columbia of substandard dwellings and of buildings in alleys and blighted areas, and thereby to eliminate the substandard housing conditions and the communities in the inhabited alleys and blighted areas in said District; and it is necessary to modernize the planning and development of such portions of such District. The Congress finds that the foregoing cannot be accomplished by the ordinary operations of private enterprise alone without public participation in the planning and in the financing of land assembly for such development; and that for the economic soundness of this redevelopment and the accomplishment of the necessary social and economic benefits, and by reason of the close relationships between the development and uses of any part of an urban area with the development and uses of all other parts the sound replanning and redevelopment of an obsolescent or obsolescing portion of such District cannot be accomplished unless it be done in the light of comprehensive and coordinated planning of the whole of the territory of the District of Columbia and its environs; and that this comprehensive planning and replanning should proceed vigorously without delay; and to these ends it is necessary to enact the provisions hereinafter set forth; and that the acquisition and the assembly of real property and the leasing or sale thereof for redevelopment pursuant to a project area redevelopment plan, all as provided in sections 5-701 to 5-719, is hereby declared to be a public use."

60 STAT. 791 (1946), D. C. CODE § 5-702 (1951):

"The following terms, whenever used or referred to in sections 5-701 to 5-719, shall, for the purposes of sections 5-701 to 5-719 and unless a different intent clearly appears from the context, be construed as follows:

"• • •

"(f) 'Low-rent housing' means safe and sanitary housing within the financial reach of families of comparatively low income and, as a guide for the standard of rental to be [fol. 205] used as a maximum at the time of the enactment of this law but not necessarily thereafter, it is specified that such housing shall be rented at not more than $13 per room per month, excluding utilities.

"* * *

"(b) 'Planning Commission' means the National Capital Park and Planning Commission.

"* * *

"(j) 'Project area' is an area of such extent and location as may be adopted by the Planning Commission and approved by the District Commissioners after public hearing as an appropriate unit of redevelopment planning for a redevelopment project separate from the redevelopment projects for other parts of the District of Columbia. In the provisions of this Act relating to lease or sale by the Agency, for abbreviation 'project area' is used for the remainder of the project area after taking out those pieces of property which in accordance with section 7-706(a) shall have been or are to be transferred for public uses.

"* * *

"(n) 'Redevelopment' means replanning, clearance, redesign, and rebuilding of project areas, including open-space types of uses, such as streets, recreation and other public grounds, and spaces around buildings, as well as buildings, structures, and improvements, but not excluding the continuance of some of the existing buildings or uses in a project area. For the purposes of sections 5-701 to 5-719, 'redevelopment' also includes the replanning, redesign, and original development of undeveloped areas which, by reason of street lay-out, lot lay-out, or other causes, are backward and stagnant and therefore blighted and for which replanning and land assembly are deemed necessary as a condition of sound development.

"* * *

"(r) 'Substandard housing conditions' means the conditions obtaining in connection with the existence of any dwelling, or dwellings, or housing accommodations for human beings, which because of lack of sanitary facilities, ventilation, or light, or because of dilapidation, overcrowding, faulty interior arrangement, or any combination of these factors, is in the opinion of the Commissioners detrimental to the safety, health, morals, or welfare of the inhabitants of the District of Columbia."

60 STAT. 793 (1946), D. C. CODE § 5-703 (1951):

"(a) The District of Columbia Redevelopment Land Agency is hereby established and shall be composed of five members. * * *"

60 STAT. 793 (1946), D. C. CODE § 5-704 (1951):

"(a) Subject to and in accordance with the procedures, conditions, and other provisions of sections 5-701 to 5-719, [fol. 206] the Agency is hereby granted the power to further the redevelopment of blighted territory in the District of Columbia and the prevention, reduction, or elimination of blighting factors or causes of blight and for that purpose to acquire and assemble real property by purchase, exchange, gift, dedication, or eminent domain, and including the power to rent, maintain, manage, operate, repair, clear, transfer, lease, and sell such real property, but excluding the power to build new structures thereon (other than the improvements mentioned in section 5-706(i) or the power to enlarge, extend, or make major structural improvements of existing buildings).

"(b) Condemnation proceedings for the acquisition of real property for said purposes shall be conducted in accordance with the procedural provisions of sections 16-619 to 16-644. The title to properties acquired under sections 5-701 to 5-719 shall be taken by and in the name of the Agency and proceedings for condemnation or other acquisition of property shall be brought by and in the name of the Agency."

60 STAT. 794 (1946), D. C. CODE § 5-705 (1951).

"(a) The Planning Commission is hereby directed to make and, from time to time, develop a comprehensive or general plan of the District of Columbia, including the appropriate maps, charts, tables, and descriptive, interpretative, and analytical matter, which plan is intended to serve as a general framework or guide of development within which the various project areas may be more precisely planned and calculated, and which comprehensive or general plan shall include at least a land-use plan which designates the proposed general distribution and general locations and extents of the uses of the land for housing, busi-

ness, industry, recreation, education, public buildings, public reservations, and other general categories of public and private uses of the land.

"(b) For the exercise of the powers granted to the Agency by sections 5-701 to 5-719 for the acquisition and disposition of real property for the redevelopment of a project area, the following steps and plans shall be requisite, namely:

"(1) Adoption by the Planning Commission of the boundaries of the project area proposed by it, submission of such boundaries to the District Commissioners, and approval thereof by said Commissioners.

"(2) Adoption by the Planning Commission and submission to, and, after a public hearing thereon, approval by the District Commissioners, of the redevelopment plan of the project area which shall contain a site and use plan for the redevelopment of the area, including the approximate locations and extents of the land uses proposed for and within the area, such as public buildings, streets, and other public works and utilities, housing, recreation, business, industry, schools, public and private open spaces, and other categories of public and private uses. Such plan shall also contain specifications of standards of population density and building intensity. Any such plan may also specify, by means of specification of maximum rentals or other basis, the amount or character or class of any low-rent housing for which the area or part thereof is proposed to be redeveloped.

[fol. 207] "• • •

"(d) After a project area redevelopment plan shall have been adopted by the Planning Commission and approved by the District Commissioners, the Planning Commission shall forthwith certify said plan to the Agency, whereupon said Agency shall proceed to the exercise of the powers granted to it in sections 5-701 to 4-719 for the acquisition and assembly of the real property of the area. • • •"

60 STAT. 795 (1946), D. C. CODE § 5-706 (1951):

"(a) After the real property in the project area shall have been assembled by the Agency, the Agency shall have the power to transfer to and shall at a practicable time or times transfer by deeds to the United States or to the District of Columbia, or to the appropriate Federal or District public body, department, or agency, those pieces of real property which, in accordance with the approved project area redevelopment plan, are to be devoted to public uses (other than public housing) falling within the construction or administrative jurisdiction of Federal or District agencies, such as streets and other utilities and works, Federal and District public buildings, public recreational spaces, and schools. • • •

"(b) The Agency shall have the power to lease or sell the remainder of the project area as an entirety to a redevelopment company or to an individual or a partnership. • • •

"(c) Any such lease or sale may be made without public bidding but only after a public hearing, after ten days' public notice, by the Agency upon the proposed lease or sale and the provisions thereof.

"(d) The term of any such lease shall be fixed by the Agency and the instrument of lease may provide for renewals upon reappraisals and with rentals and other provisions adjusted to such reappraisals. Every such lease or sale shall provide that the lessee or purchaser shall carry out or cause to be carried out the approved project area redevelopment plan or approved modifications thereof and that no use shall be made of any land or real property included in the lease or sale nor any building or structure erected thereon which does not conform to such approved plan or approved modifications thereof. • • •

"(e) Until the Agency certifies that all building constructions and other physical improvements specified to be done and made by the purchaser of the area have been completed, the purchaser shall have no power to convey the area, or any part thereof, without the consent of the Agency; • • •.

"(f) In lieu of the lease or sale of a project area as an

entirety, the Agency shall have the power to lease or sell parts of such area separately to individuals, partnerships, or redevelopment companies. * * *

"* * *

[fol. 208] "(h) The Agency may itself demolish any existing structure or clear the area or any part thereof, or may specify the demolition and clearance to be performed by a lessee or purchaser within a reasonable time after such lease or purchase. The Agency may specify a reasonable time schedule and reasonable conditions for the construction of buildings and other improvements by a lessee or purchaser: * * *."

60 STAT. 797 (1946), D. C. CODE § 5-707 (1951):

"(a) Prior to approval by the District Commissioners, pursuant to subparagraph (2) of section 5-705(b), of any redevelopment plan, the District Commissioners shall satisfy themselves (and shall so state at the public hearing required by such subparagraph) that decent, safe, and sanitary housing, substantially equal in quantity to the number of substandard dwelling units to be removed or demolished within the project area, under the proposed redevelopment plan, are available or will be provided (by construction pursuant to the redevelopment plan, or otherwise) in localities, and at rents or prices, within the reach of the low-income families displaced or to be displaced (temporarily or permanently), pursuant to the redevelopment plan, from the project area."

63 STAT. 441 (1949), D. C. CODE § 5-717a (1951):

"* * *

"(g) It is the purpose and intent of this section to authorize the District Commissioners and the appropriate agencies operating within the District of Columbia to do any and all things necessary to secure financial aid under title I of the Housing Act of 1949. The District of Columbia Redevelopment Land Agency is hereby declared to be a local public agency for all of the purposes of title I of the Housing Act of 1949. * * *"

[fol. 209] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil Action No. 5791-52

GOLDIE SCHNEIDER, Plaintiff,

v.

DISTRICT OF COLUMBIA, et al., Defendants

Civil Action No. 476-53

MAX R. MORRIS, Plaintiff,

v.

THE DISTRICT OF COLUMBIA REDEVELOPMENT LAND AGENCY, et al., Defendants

ORDER GRANTING MOTION TO DISMISS—Filed November 20, 1953

In accordance with the opinion of this Court, dated November 5, 1953, it is hereby

Ordered, Adjudged and Decreed that the constitutionality of the District of Columbia Redevelopment Act of 1945, 60 Stat. 790, D. C. Code § 5-701 et seq. (1951), be and the same is hereby sustained, and it is further

Ordered that the motion to dismiss the complaints filed on behalf of the defendants be and the same is hereby granted, with leave however to file amended complaints within 10 days from the date of this order.

Date: November 20, 1953.

E. Barrett Prettyman, Circuit Judge, United States Court of Appeals. Richmond B. Keech, Judge, United States District Court. Edward M. Curran, Judge, United States District Court.

[fols. 210-214] Certificate of service (omitted in printing).

[fol. 215] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR APPEAL—Filed December 21, 1953

Max R. Morris, plaintiff in the above-entitled cause, feeling himself aggrieved by the order of the Court dismissing his complaint, entered herein on the 20th day of November, 1953, for the reasons set forth in his assignment of errors which is filed herewith, hereby prays an appeal from such order to the Supreme Court of the United States, and further prays that a transcript of the record on appeal be certified and sent to the Supreme Court of the United States.

James C. Toomey, 910 - 17th Street, N.W., Washington 6, D. C.; Joseph H. Schneider, 602 - 7th Street, S.W., Washington, D. C. Albert Ginsberg, 602 - 7th Street, S.W., Washington, D. C., Attorneys for Plaintiff.

[fols. 216-218] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

[Title omitted]

ORDER ALLOWING APPEAL—Filed December 21, 1953

It appearing to the Court that the plaintiff, Max R. Morris, has filed his petition for appeal to the Supreme Court of the United States, and filed therewith his assignment of errors, and also his statement as to the jurisdiction of the Supreme Court of the United States, as required by Rule 12 of the Supreme Court Rules, duly disclosing that the Supreme Court of the United States has jurisdiction upon appeal to review the order granting defendant's motion to dismiss the complaint for temporary and permanent injunction, mandatory injunction, and declara-

tory judgment, entered herein on November 20, 1953, it is by the Court this 21st day of December, 1953,

Ordered that the appeal prayed for be and the same is hereby allowed and granted to the Supreme Court of the United States from the order granting defendant's motion to dismiss the complaint for temporary and permanent injunction, mandatory injunction and declaratory judgment, rendered in this cause on the 20th day of November, 1953, and that the record on appeal be made and certified and sent to the Supreme Court of the United States in accordance with the rules of that Court, said appeal being hereby made returnable forty (40) days from the date hereof.

Edward M. Curran, United States District Judge.

In the United States District Court

[fols. 219-254] [File endorsement omitted]

[Title omitted]

Assignment of Errors and Prayer for Reversal—Filed December 21, 1953

Max R. Morris, plaintiff in the above entitled cause, in connection with his petition for an appeal to the Supreme Court of the United States, hereby assigns error to the entry of the order dismissing his complaint, and says that in the entry of said order the said District Court committed error to the prejudice of the plaintiff in the following particulars:

1. The Court erred in dismissing the plaintiff's complaint.

2. The Court erred in failing to determine that the Act of Congress of the United States of August 2, 1946, 60 Stat. 790, District of Columbia Code Title 5-701 et seq. (1951) is unconstitutional.

3. The Court erred in holding that the Act of Congress of the United States of August 2, 1946, 60 Stat. 790, District of Columbia Code Title 5-701 et seq. (1951) are constitutional.

Wherefore, plaintiff prays that the order of the District Court dismissing his complaint be reversed.

James C. Toomey, 910-17th Street, N. W., Washington 6, D. C. Joseph H. Schneider, 502-7th Street, S. W., Washington, D. C. Albert Ginsberg, 602-7th Street, S. W., Washington, D. C. Attorneys for Plaintiffs.

[fol. 255] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 256] IN THE SUPREME COURT OF THE UNITED STATES

No. 550

MAX R. MORRIS, Appellant,

vs.

ANDREW PARKER, JOHN A. REMON, JAMES E. COLLIFLOWER, et al., Defendants

STATEMENT OF POINTS TO BE RELIED UPON—Filed February 15, 1954

(A) Appellant adopts for its statement of points upon which it intends to rely in its appeal to this Court the points contained in its Assignment of Errors heretofore filed.

[fols. 257-259] Certificate of Service—(Omitted in Printing)

[fols. 260-263] IN THE SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1953

[Title omitted]

APPELLEES' COUNTER-DESIGNATION OF PARTS OF THE RECORD TO BE PRINTED—(Omitted in Printing)

Certificate of Service [omitted in printing.]

[fol. 263a] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1953

No. 550

MAX R. MORRIS, Deceased, Appellant,

vs.

ANDREW PARKER, JOHN A. REMON, JAMES E. COLLIFLOWER et al.

ORDER OF SUBSTITUTION—Filed June 7, 1954

On Consideration of the motion of counsel for the appellant to substitute Samuel Berman and Solomon H. Feldman, executors of the estate of Max R. Morris, deceased, as parties appellant in this cause,

It Is Ordered by this Court that the said motion be, and it is hereby, granted.

[fol. 264] IN THE SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1954

No. 22

SAMUEL BERMAN and SOLOMON H. FELDMAN, Executors of the Estate of Max R. Morris, Deceased,

v.

ANDREW PARKER, et al.

STIPULATION AS TO PRINTING OF RECORD—Filed July 28, 1954

It is stipulated by the parties to the above-cause as follows:

(1) That copies of the official redevelopment plan for southwest redevelopment project area B adopted October 24, 1952, and related papers bound together and attached to the affidavit of Carl R. Nolte, Exhibit 1 to motion to dismiss or in the alternative for summary judgment may be submitted to the Court as an appendix to appellees' brief

without the necessity of inclusion thereof in the printed record.

(2) That in the printing of record the following documents may be omitted:

(a) Memorandum of Points and Authorities in Support of Motion to Dismiss or in the Alternative for Summary Judgment and Attachments thereto — pages 14-32 of the transcript of record;

(b) Memorandum of Points and Authorities in Opposition to Motion of Defendants to Dismiss or in the Alternative for Summary Judgment and in Support of Motion of Plaintiff for Summary Judgment — pages 120-125 of the transcript of record;

[fols. 265-267] (c) Memorandum of Points and Authorities in Opposition to Plaintiff's Motion for Summary Judgment—pages 126-131 of the transcript of record;

(d) Opinion of the Supreme Court of Ohio in the State, ex rel. Bruestle, City Solicitor v. Rich, Mayor, et al. — pages 132-148 of the transcript of record;

(e) Article from Washington and Lee Law Review, Recent Slum Clearance and Urban Redevelopment Laws by Phillip H. Hill — pages 149-165 of the transcript of record;

(f) Exhibit A to Exhibit 3 in Support of Motion to Dismiss or in the Alternative for Summary Judgment, being the District of Columbia Redevelopment Act of 1945 — pages 33-55 of the transcript of record; and

(g) Exhibit C to Exhibit 3 in Support of Motion to Dismiss or in the Alternative for Summary Judgment, being the Housing Act of 1949 — pages 56-91 of the transcript of record.

Respectfully submitted, Simon E. Sobeloff, Solicitor General, Counsel for Appellees, The District of Columbia Redevelopment Land Agency, and National Capital Planning Commission; Vernon E. West, Counsel for Board of Commissioners, District of Columbia, by Chester H. Gray.

Joseph H. Schneider, Counsel for Appellant.

Date: July 27, 1954.

[fol. 268] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1953

No. 550

[Title omitted]

ORDER NOTING PROBABLE JURISDICTION—Filed March 8, 1954

Appeal from the United States District Court for the District of Columbia.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1953

No. 522

MAX R. MORRIS,

Appellant,

vs.

ANDREW PARKER, JOHN A. REMON, JAMES E. COLLIFLOWER, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

STATEMENT AS TO JURISDICTION

JAMES C. TOOMEY,
JOSEPH H. SCHNEIDER,
ALBERT GINSBERG,
Counsel for Appellant.

INDEX

Subject Index

	Page
Statement as to jurisdiction	1
Statutory provisions sustaining jurisdiction	2
Statute involved	2
Date of judgment and of petition for appeal	28
Substantial nature of the questions involved and showing of abuse of discretion in dismissing the complaint	29
Conclusion	38
Appendix "A"—Opinion of the United States District Court for the District of Columbia	39

Table of Cases Cited

Adams v. *Housing Authority of City of Daytona*, 60 So. (2d) 663	31
American Power Company v. *Securities Exchange Commission*, 329 U.S. 90	36, 37
Brown and Others v. *The United States*, 263 U.S. 78	34
Fay v. *Macfarland*, 32 App. D.C. 295	36
Housing Authority of the City of Atlanta v. *Johnson*, 74 S. C. (2d) 891	32
Latto v. *United States*, 157 F.(2) 623	37
McCulloch v. *Maryland*, 4 Wheat. 316	35
Murray v. *La Guardia*, 291 N.Y. 320	33
Neufield v. *O'Dwyer*, 79 N.Y.S. 53	33
New York City Housing Authority, In the Matter of the v. *Andrew Muller*, 270 N.Y. 333	32
United States v. *Dettra Flag Company*, 86 F. (Supp.) 84	37
United States v. *Gettysburg Electric Railway Company*, 160 U.S. 668	34

Page

United States ex rel. Tennessee Valley Authority v. *Welch*, 327 U.S. 546 34
Yakus v. *United States*, 321 U.S. 414 36

STATUTES AND OTHER AUTHORITIES CITED

Act of Congress of August 2nd, 1946, ("District of Columbia Redevelopment Act of 1945."), 60 Stat. 790, District of Columbia Code, Title 5-701, et seq. (1951), Chapter 7—Housing Redevelopment 1, 2
Section 5-701—General Purposes 2
Section 5-702—Definitions 4
Section 5-705—Establishment and Powers of the Agency 7
Section 5-704—Power to Acquire and Assemble Real Property 8
Section 5-705—General and Project Area Redevelopment Plans 9
Section 5-706—Transfer, Lease, or Sale of Real Property in Project Area for Public and Private Uses 11
Section 5-707—Housing for Displaced Families 15
Section 5-708—Acquisition of Property from Prospective Lessee or Purchaser 15
Section 5-709—Use—Value Appraisals 16
Section 5-710—Protection of Redevelopment Plans 16
Section 5 711—Modification of Redevelopment Plan 18
Section 5-712—Limitation upon Tax Exemption 18
Section 5-713—Administrative Expenditure and Employment 19
Section 5-714—Annual Report 20
Section 5-715—Appropriations Authorized 20
Section 5-716—Acquisition under District of Columbia Alley Dwelling Act 22
Section 5-717—Encouragement and Aid to Private Lending Institutions 23
Section 5-717a—Acceptance of Financial Assistance Authorized 24

Page
Section 5-718—Effect upon Existing Statutes 28
Section 5-719—Separability of Provisions 28
Constitution of the State of New York, Amendment 18 33
Constitution of the United States, Fifth Amendment 33
United States Code, Title 28:
Section 1253 2
Section 2282 1, 2

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil Action No. 476-53

MAX R. MORRIS,

Plaintiff,

vs.

ANDREW PARKER, ET AL.

STATEMENT AS TO JURISDICTION

In accordance with Rule 12 of the Rules of the Supreme Court of the United States, as amended, appellant files herewith his statement upon which he bases his allegation that the Supreme Court of the United States has appellate jurisdiction to review on appeal the judgment appealed from herein, pursuant to Rule 12, Paragraph 1, to said Court:

1. This is an action brought in the United States District Court for the District of Columbia to enjoin the defendants, the Redevelopment Land Agency, from taking or proceeding to take, the real property of your plaintiff through the processes of eminent domain or otherwise.

The Complaint alleges that the Act of Congress of August 2, 1946, 60 Stat. 790, District of Columbia Code, Title 5-701 et seq. is unconstitutional. A statutory, three-judge Court was convened pursuant to Title 28, U. S. C., Sec.

2282, which Court considered said Complaint and motion to dismiss filed herein, and on November 20, 1953, the said Court entered an order holding that the Act of Congress of August 2, 1946, 60 Stat. 790, District of Columbia Code Title 5-701 et seq. (1951) was constitutional and dismissed the complaint.

Statutory Provisions Sustaining Jurisdiction

The statute believed to sustain appellate jurisdiction herein is 28 U. S. C. Sec. 1253 which provides:

> "Sec. 1253. Direct appeals from decisions of three-judge courts.
>
> "Except as otherwise provided by law, any party may appeal to the Supreme Court from an order granting or denying, after notice and hearing, an interlocutory or permanent injunction in any civil action, suit or proceeding required by any Act of Congress to be heard and determined by a district court of three judges. June 25, 1948, c. 646, 62 Stat. 926."

Statute Involved

2. The statute of the United States, the validity of which is involved in this appeal, is the District of Columbia Redevelopment Act of 1945, 60 Stat. 790, District of Columbia Code Title 5-701 (1951), which provides as follows:

> "Chapter 7.—Housing Redevelopment
>
> "Sec. 5-701. General purposes.
>
> "It is hereby declared to be a matter of legislative determination that owing to technological and sociological changes, obsolete lay-out, and other factors, conditions existing in the District of Columbia with respect to substandard housing and blighted areas, including the use of buildings in alleys as dwellings for human habitation, are injurious to the public health, safety, morals, and welfare, and it is hereby declared

to be the policy of the United States to protect and promote the welfare of the inhabitants of the seat of the Government by eliminating all such injurious conditions by employing all means necessary and appropriate for the purpose; and control by regulatory processes having proved inadequate and insufficient to remedy the evils, it is in the judgment of Congress necessary to acquire property in the District of Columbia by gift, purchase, or the use of eminent domain to effectuate the declared policy by the discontinuance of the use for human habitation in the District of Columbia of substandard dwellings and of buildings in alleys and blighted areas, and thereby to eliminate the substandard housing conditions and the communities in the inhabited alleys and blighted areas in such District; and it is necessary to modernize the planning and development of such portions of such District. The Congress finds that the foregoing cannot be accomplished by the ordinary operations of private enterprise alone without public participation in the planning and in the financing of land assembly for such development; and that for the economic soundness of this redevelopment and the accomplishment of the necessary social and economic benefits, and by reason of the close relationships between the development and uses of any part of an urban area with the development and uses of all other parts the sound replanning and redevelopment of an obsolescent or obsolescing portion of such District cannot be accomplished unless it be done in the light of comprehensive and coordinate planning of the whole of the territory of the District of Columbia and its environs; and that this comprehensive planning and replanning should proceed vigorously without delay; and to these ends it is necessary to enact the provisions hereinafter set forth; and that the acquisition and the assembly of real property and the leasing or sale thereof for redevelopment pursuant to a project area redevelopment plan, all as provided in sections 5-701, is hereby declared to be a public use. (Aug. 2, 1946, 60 Stat. 790, ch. 736, § 2.)

"§ 5-702. Definitions.

"The following terms, whenever used or referred to in sections 5-701 to 5-719, shall, for the purposes of sections 5-701 to 5-719 and unless a different intent clearly appears from the context, be construed as follows:

"(a) The term 'Agency' means the District of Columbia Redevelopment Land Agency established by section 5-703.

"(b) 'District Commissioners' means the Board of Commissioners of the District of Columbia.

"(c) 'Housing' includes housing, dwelling, habitation, and residence.

"(d) 'Housing project' means any low-rent housing (as defined in the United States Housing Act of 1937, U. S. C., title 42, ch. 8), the development or administration of which is assisted by the United States Housing Authority.

"(e) 'Land' includes bare or vacant land, or the land under buidings, structures, or other improvements; also water and land under water. When employed in connection with 'use,' as for instance, 'use of land' or 'land use,' 'land' also includes buildings, structures, and improvements existing or to be placed thereon.

"(f) 'Low-rent housing' means safe and sanitary housing within the financial reach of families of comparatively low income and, as a guide for the standard of rental to be used as a maximum at the time of the enactment of this law but not necessarily thereafter, it is specified that such housing shall be rented at not more than $13 per room per month, excluding utilities.

"(g) 'Lessee' includes the successors or assigns and successors in title of any lessee.

"(h) 'Planning Commission' means the National Capital Park and Planning Commission.

"(i) 'Proceeds' means the money proceeds of sales or transfers by the Agency; and 'net proceeds' the

gross proceeds after deducting commissions or other expenses of the sales or transfers.

"(j) 'Project area' is an area of such extent and location as may be adopted by the Planning Commission and approved by the District Commissioners after public hearing as an appropriate unit of redevelopment planning for a redevelopment project separate from the redevelopment projects for other parts of the District of Columbia. In the provisions of this Act relating to lease or sale by the Agency, for abbreviation 'project area' is used for the remainder of the project area after taking out those pieces of property which in accordance with section 7-706(a) shall have been or are to be transferred for public uses.

"(k) 'Public low-rent housing' means low-rent housing, constructed by a public agency for families of low income, at rentals which (including the value or cost to tenants of heat, light, water and cooking fuel) shall not exceed one-fifth of the highest net family income of families eligible for tenancy in such housing, as herein provided. The dwellings in public low-rent housing shall be available solely for such families of low income whose net family income does not exceed the maximum net family income falling within the lowest 20 per centum by number of all family incomes in the District of Columbia, as such maximum net family income shall have been determined, or from time to time redetermined after public hearing, by the District Commissioners. At the end of one year after the enactment of sections 5-701 to 5-719 this definition shall be reexamined by the Commissioners for the District of Columbia and a public hearing shall be held thereon to determine whether administrative or interpretive difficulties or unsatisfactory progress in the provision of low-rent housing requires a modification thereof. Upon the conclusion of such hearing the Commissioners shall forthwith make recommendations to Congress whether said definition should be modified and, if so, to what extent.

"(l) 'Purchaser' includes the successors or assigns and successors in title of any purchaser.

"(m) 'Real Property' includes land; also includes land together with the buildings, structures, fixtures, and other improvements thereon; also includes liens, estates, easements, and other interests therein; and also includes restrictions or limitations upon the use of land, buildings, or structures other than those imposed by exercise of the police power.

"(n) 'Redevelopment' means replanning, clearance, redesign, and rebuilding of project areas, including open-space types of uses, such as streets, recreation and other public grounds, and spaces around buildings, as well as buildings, structures, and improvements, but not excluding the continuance of some of the existing buildings or uses in a project area. For the purposes of sections 5-701 to 5-719 ,'redevelopment' also includes the replanning, redesign, and original development of undeveloped areas which, by reason of street lay-out, lot lay-out, or other causes, are backward and stagnant and therefore blighted and for which replanning and land assembly are deemed necessary as a condition of sound development.

"(o) 'Redevelopment company' means a private or public corporation or body corporate, whether organized under the District of Columbia Code or the laws of the United States or any State, or an unincorporated association, trust, or other legal entity, which, by virtue of the statutes, charter, articles of incorporation, instruments of trust, or other instrument defining its powers, has the power to become a lessee or purchaser of a project area and to conform to the provisions of this Act and to perform fully and comply with the terms of the lease or sale of such area or part thereof to it.

"(p) 'Rentals' means the rents specified in a lease to be paid by the lessee to the Agency; 'net rentals' means gross rentals after deducting taxes payable by the Agency.

"(q) 'Revenues' means the revenues or income received by the Agency from real property while held by

it and operated or temporarily let by it and not yet leased, transferred, or sold by it; and 'net revenues' means the gross revenues after deducting repair, management, maintenance, insurance, and other operating expenses and taxes paid or payable by the Agency.

"(r) 'Substandard housing conditions' means the conditions obtaining in connection with the existence of any dwelling, or dwellings, or housing accommodations for human beings, which because of lack of sanitary facilities, ventilation, or light, or because of dilapidation, overcrowding, faulty interior arrangement, or any combination of these factors, is in the opinion of the Commissioners detrimental to the safety, health, morals, or welfare of the inhabitants of the District of Columbia (Aug. 2, 1946, 60 Stat. 791, ch. 736, § 3).

"§ 5-703. Establishment and powers of the Agency.

"(a) The District of Columbia Redevelopment Land Agency is hereby established and shall be composed of five members. Two members shall be appointed by the President and three members shall be appointed by the District Commissioners, subject to confirmation by the Senate. One of the Presidential appointees may be an official of the United States Government; one appointee of the District Commissioners may be an official of the District of Columbia Government. Each nonofficial appointee shall have been a resident of the District of Columbia for at least the five next preceding years, and shall have been engaged or employed during such time in private business or industry, or the private practice of a profession, in the District of Columbia. The terms of members shall be for five years, except that the first appointment of one of the Presidential appointees shall be for three years and the other for five years; one of the first appointments of the District Commissioners shall be for four years, one for two years, and one for one year: Provided, That in the event any member shall cease to hold the official position held by him at the time of his designation or appointment, such cessation shall be deemed to create a vacancy in his membership on the Agency,

such vacancy, as well as all vacancies from other causes, to be filled by designation or appointment by the President or District Commissioners for the unexpired term. The members shall receive no salary as such, but those members who hold no other salaried public position shall be paid a per diem of $20 for each day of service at meetings or on the work of the Agency.

"(b) The said District of Columbia Redevelopment Agency is hereby made a body corporate of perpetual duration, the powers of which shall be vested in and exercised by the board of directors thereof, consisting of the five members thereof appointed as above set forth. It shall have the power to adopt, alter, and use a corporate seal which shall be judicially noticed; to make contracts; to sue and be sued, to complain and defend in its own name in any court of competent jurisdiction, State, Federal, or municipal; to make, deliver, and receive deeds, leases, and other instruments and to take title to real and other property in its own name; to adopt, prescribe, amend, repeal, and enforce bylaws, rules and regulations for the exercise of its powers under sections 5-701 to 5-719 or governing the manner in which its business may be conducted and the powers granted to it by sections 5-701 to 5-719 may be exercised and enjoyed, including the selection of its chairman and other officers, together with provisions for such committees and the functions thereof as it may deem necessary for facilitation of its work; to protect and enforce any right conferred upon it by sections 5-701 to 5-719, or otherwise acquired, including any lease, sale, or other agreement made by or with it; and in general to exercise all the powers necessary or proper to the performance of its duties and functions under sections 5-701 to 5-719 (Aug. 2, 1946, 60 Stat. 793, ch. 736, § 4).

§ 5-704. Power to acquire and assemble real property.

"(a) Subject to and in accordance with the procedures, conditions, and other provisions of sections 5-701

to 5-719, the Agency is hereby granted the power to further the redevelopment of blighted territory in the District of Columbia and the prevention, reduction, or elimination of blighting factors or causes of blight and for that purpose to acquire and assemble real property by purchase, exchange, gift, dedication, or eminent domain, and including the power to rent, maintain, manage, operate, repair, clear, transfer, lease, and sell such real property, but excluding the power to build new structures thereon (other than the improvements mentioned in section 5-706 (i) or the power to enlarge, extend, or make major structural improvements of existing buildings).

"(b) Condemnation proceedings for the acquisition of real property for said purposes shall be conducted in accordance with the procedural provisions of sections 16-619 to 16-644. The title to properties acquired under sections 5-701 to 5-719 shall be taken by and in the name of the Agency and proceedings for condemnation or other acquistion of property shall be brought by and in the name of the Agency. (Aug. 2, 1946, 60 Stat. 793, ch. 736, § 5.)

"§ 5-705. General and project area redevelopment plans.

"(a) The Planning Commission is hereby directed to make and, from time to time, develop a comprehensive or general plan of the District of Columbia, including the appropriate maps, charts, tables, and descriptive, interpretative, and analytical matter, which plan is intended to serve as a general framework or guide of development within which the various project areas may be more precisely planned and calculated, and which comprehensive or general plan shall include at least a land-use plan which designates the proposed general distribution and general locations and extents of the uses of the land for housing, business, industry, recreation, education, public buildings, public reservations, and other general categories of public and private uses of the land.

"(b) For the exercise of the powers granted to the

Agency by sections 5-701 to 5-719 for the acquisition and disposition of real property for the redevelopment of a project area, the following steps and plans shall be requisite, namely:

"(1) Adoption by the Planning Commission of the boundaries of the project area proposed by it, submission of such boundaries to the District Commissioners, and approval thereof by said Commissioners.

"(2) Adoption by the Planning Commission and submission to, and, after a public hearing thereon, approval by the District Commissioners, of the redevelopment plan of the project area which shall contain a site and use plan for the redevelopment of the area, including the approximate locations and extents of the land uses proposed for and within the area, such as public buildings, streets, and other public works and utilities, housing, recreation, business, industry, schools, public and private open spaces, and other categories of public and private uses. Such plan shall also contain specifications of standards of population density and building intensity. Any such plan may also specify, by means of specification of maximum rentals or other basis, the amount or character or class of any low-rent housing for which the area or part thereof is proposed to be redeveloped.

"(c) In relation to the location and extent of public works and utilities, public buildings, and other public uses in the general plan or in a project area plan, the Planning Commission is directed to confer with the Federal and District public officials, boards, authorities, and agencies under whose administrative jurisdictions such uses respectively fall. In the project area planning, the Planning Commission is directed to consult from time to time with the Agency, and the Agency shall be free at all times to submit to the Planning Commission suggestions regarding both the location and extent of project areas and the use and site plans of project areas.

"(d) After a project area redevelopment plan shall have been adopted by the Planning Commission and approved by the District Commissioners, the Planning Commission shall forthwith certify said plan to the Agency, whereupon said Agency shall proceed to the exercise of the powers granted to it in sections 5-701 to 5-719 for the acquisition and assembly of the real property of the area. Following such certification, no new construction shall be authorized by the District Commissioners in such area, including substantial remodeling or conversion or rebuilding, enlargement or extension or major structural improvements on existing buildings, but not including ordinary maintenance or remodeling or changes necessary to continue the occupancy. (August 2, 1946, 60 Stat. 794, ch. 736, § 6.)

§ 5-706. Transfer, lease, or sale of real property in project area for public and private uses.

"(a) After the real property in the project area shall have been assembled by the Agency, the Agency shall have the power to transfer to and shall at a practicable time or times transfer by deeds to the United States or to the District of Columbia, or to the appropriate Federal or District public body, department, or agency, those pieces of real property which, in accordance with the approved project area redevelopment plan, are to be devoted to public uses (other than public housing) falling within the construction or administrative jurisdiction of Federal or District agencies, such as streets and other utilities and works. Federal and District public buildings, public recreational spaces, and schools. The Federal agencies and the public agencies of the District of Columbia are hereby empowered, respectively, to acquire real property from the Agency for the uses respectively specified in the project area plan and to pay for same out of their funds duly appropriated for such acquisition. Excepting for such property as may be transferred by dedication, gift, or exchange, the transferee agency shall pay to the Agency such sum as may be agreed upon or, in the absence of agreement, as may be fixed

by the Chief Justice of the District Court of the United States for the District of Columbia.

"(b) The Agency shall have the power to lease or sell the remainder of the project area as an entirety to a redevelopment company or to an individual or a partnership. Said remainder may include streets or parts thereof which in accordance with the plan are to be closed or vacated or other than publicly owned properties; and the Federal and District departments and agencies are empowered to transfer said spaces or properties to the Agency for such sums or other consideration as may be agreed upon.

"(c) Any such lease or sale may be made without public bidding but only after a public hearing, after ten days' public notice, by the Agency upon the proposed lease or sale and the provisions thereof.

"(d) The term of any such lease shall be fixed by the Agency and the instrument of lease may provide for renewals upon reappraisals and with rentals and other provisions adjusted to such reappraisals. Every such lease or sale shall provide that the lessee or purchaser shall carry out or cause to be carried out the approved project area redevelopment plan or approved modifications thereof and that no use shall be made of any land or real property included in the lease or sale nor any building or structure erected thereon which does not conform to such approved plan or approved modifications thereof. In the instrument, or instruments, of lease or sale, the Agency may include such other terms, conditions, and provisions as in its judgment will provide reasonable assurance of the priority of the obligations of any other obligations of the lessee or purchaser and the lease or sale and of conformance to the plan over also assurance of the financial and legal ability of the lessee or purchaser or carry out and conform to the plan and the terms and conditions of the lease or sale; also, such terms, conditions, and specifications concerning buildings, improvements, subleases, or tenancies, maintenance and management, and any other related matters as the Agency may reason-

ably impose or approve, including provisions whereby the obligations to carry out and conform to the project area plan shall run with the land. In the event that maximum rentals to be charged to tenants of housing be specified, provision may be made for periodic reconsideration of such rental bases, with a view to proposing modification of the project area plan with respect to such rentals.

"(e) Until the Agency certifies that all building constructions and other physical improvements specified to be done and made by the purchaser of the area have been completed, the purchaser shall have no power to convey the area, or any part thereof, without the consent of the Agency; and no such consent shall be given unless the grantee or mortgagee of the purchaser obligates itself or himself by written instrument to the Agency to carry out that portion of the redevelopment plan which falls within the boundaries of the conveyed property, and also that the grantee, his or its heirs, representatives, successors, and assigns, shall have no right or power to convey, lease, or let the conveyed property or any part thereof or erect or use any building or structure erected thereon free from the obligation and requirement to conform to the approved project area redevelopment plan or approved modifications thereof.

"(f) In lieu of the lease or sale of a project area as an entirety, the Agency shall have the power to lease or sell parts of such area separately to individuals, partnerships, or redevelopment companies. Any such sale or lease of a part or parts of a project area shall be fully subject to the provisions of subsections (c), (d), and (e) of this section.

"(g) No lease or sale of any project area or portion thereof shall be made by the Agency to any public redevelopment company unless the terms of such lease or sale shall provide greater compensation to the Agency than any offer or combination of offers based on substantially the same area and substantially the same redevelopment plan which shall be received from any

responsible private sources (eligible as purchasers or lessees under Sections 5-701 to 5-719) within a reasonable announced period of time (not less than thirty days) after the public hearing on such proposed lease or sale. It is the intent of this provision that private enterprise as represented through a responsible private redevelopment company, individual, or partnership shall be given a preference over any public redevelopment company in such lease or sale provided such preference can be given, in the judgment of the Agency, consistently with the protection of the public interest and consistently with a purpose to resort to a public redevelopment company only in the event that private enterprise shall not reasonably be available for the development of the project area or the part thereof under consideration.

"(h) The Agency may itself demolish any existing structure or clear the area or any part thereof, or may specify the demolition and clearance to be performed by a lessee or purchaser within a reasonable time after such lease or purchase. The Agency may specify a reasonable time schedule and reasonable conditions for the construction of buildings and other improvements by a lessee or purchaser: Provided, That any such time schedule or condition shall be specified prior to the offering of the area or part thereof for lease or sale, and shall be equally binding upon any purchaser or lessee, public or private. The cost of demolition or clearance made by the Agency pursuant to this subsection shall be treated as an item of cost of the acquisition of the area.

"(i) In order to facilitate the lease or sale of a project area or, in the event that the lease or sale is of parts of an area, then to facilitate the leases or sales of such parts, the Agency shall have the power to include in the cost payable by it the cost of the construction of local streets and sidewalks within the area or of grading and other local public surface or subsurface facilities necessary for shaping the area as the site of the redevelopment of the area. The Agency may ar-

range with the appropriate Federal or District agencies for the reimbursement of such outlays from funds or assessments raised or levied for such purposes. (Aug. 2, 1946, 60 Stat. 795, ch. 736, § 7.)

"§ 5-707. Housing for displaced families.

"(a) Prior to approval by the District Commissioners, pursuant to subparagraph (2) of section 5-705 (b), of any redevelopment plan, the District Commissioners shall satisfy themselves (and shall so state at the public hearing required by such subparagraph) that decent, safe, and sanitary housing, substantially equal in quantity to the number of substandard dwelling units to be removed or demolished within the project area, under the proposed redevelopment plan, are available or will be provided (by construction pursuant to the redevelopment plan, or otherwise) in localities, and at rents or prices, within the reach of the low-income families displaced or to be displaced (temporarily or permanently), pursuant to the redevelopment plan, from the project area.

"(b) Families displaced by slum clearance or redevelopment under Sections 5-701 to 5-719 shall be given preference as tenants to fill vacancies occurring in housing owned or operated within the District of Columbia by Federal or District of Columbia governmental agencies until appropriate housing is available to such families. (Aug. 2, 1946, 60 Stat. 797, ch. 736, § 8.)

"§ 5-708. Acquisition of property from prospective lessee or purchaser.

"As an aid in the acquisition of the real property of a project area, the Agency may accept a fund or, at an agreed value, any parcel or parcels of property within such area, from any redevelopment company or partnership or individual, subject to a provision that in the event the supplier of any such fund or the conveyor of such property shall become the purchaser of the project area or any part or parts thereof such fund

or the agreed value of such property shall be credited on the purchase price of such area or part thereof and if there be an excess above the cost of acquisition of the area such excess shall be returned, and that in the event that such supplier or conveyor does not become the purchaser of such area or any part thereof, the amount of the fund or the agreed value of such property (as the case may be) shall be paid to such supplier or conveyor. (Aug. 2, 1946, 60 Stat. 797, ch. 736, § 9.)

"§ 5-709. Use-value appraisals.

"After the Agency shall have assembled and acquired the real property [1] of a project area, it shall, as an aid to it in determining the rentals and other terms upon which it will lease or the price at which it will sell the area or parts thereof, place a use-value upon each piece or tract of land within the area which, in accordance with the plan, is to be used for private uses or for low-rent housing, such use-value to be based on the planned use; and, for the purpose of this use valuation, it shall cause a use-value appraisal to be made by two or more land-value experts employed by it for the purpose, but nothing contained in this section shall be construed as requiring the Agency to base its rentals or selling prices upon such appraisal.

"The aggregate use value placed, for purposes of lease or sale, upon all land, within a particular project area, leased or sold by the Agency pursuant to sections 5-701 to 5-719 shall be not less than one-third of the aggregate cost to the Agency of acquiring all such land (excluding the cost of old buildings destroyed and the demolition and clearance thereof). (Aug. 2, 1946, 60 Stat. 797, ch. 736, § 10.)

"§ 5-710. Protection of redevelopment plan.

"(a) Previous to the execution and delivery by the Agency of a lease or conveyance to a redevelopment company or previous to the consent by the Agency to

[1] So in original.

an assignment or conveyance by a lessee or purchaser to a redevelopment company, the articles or certificate of incorporation or association or charter or other basic instrument of such company shall contain provisions so defining, limiting, and regulating the exercise of the powers of the company that neither the company nor its stockholders, its officers, its directors, its members, its beneficaries, its bondholders, or other creditors or other persons shall have any power to amend or to effect the amendment of the terms and conditions of the lease or the terms and conditions of the sale without the consent of the Agency or, in relation to the project area redevelopment plan, without the approval of any proposed modification in accordance with the provisions of section 5-711; and no action of stockholders, officers, directors, bondholders, creditors, partners or other persons, nor any reorganization, dissolution, receivership, consolidation, foreclosure, or any other change in the status or obligation or any redevelopment company, partnership, or individual in any litigation or proceeding in any Federal or other court shall effect any release or any impairment or modification of the lease or terms of sale or of the project area redevelopment plan unless such consent or approval be obtained.

"(b) Redevelopment corporations may be organized under the provisions of chapter 2 of title 29; and said corporations shall have the power to be redevelopment companies under sections 5-701 to 5-719 and to acquire and hold real property for the purposes set forth in sections 5-701 to 5-719 and to exercise all other powers granted to redevelopment companies in sections 5-701 to 5-719 subject to the provisions, limitations, and obligations set forth in sections 5-701 to 5-719.

"(c) A redevelopment company individual, or partnership to which any project area or part thereof is leased or sold under sections 5-701 to 5-719 shall keep books of account of its operations of or transactions relating to such area or part thereof entirely separate and distinct from its or his accounts of and for any

other project area or part thereof or any other real property or enterprise; and no lien or other interest shall be placed upon any real property in said area to secure any indebtedness or obligation of the redevelopment company, individual, or partnership incurred for or in relation to any property or enterprise outside of said area. (Aug. 2, 1946, 60 Stat. 798, ch. 736, § 11.)

"§ 5-711. Modification of redevelopment plans.

"An approved project area redevelopment plan may be modified at any time or times; Provided, That any such modification as it may affect an area or part thereof which has been sold or leased shall not become effective without the consent in writing of the purchaser or lessee thereof: Provided further, That such modification may be effected only through adoption by the Planning Commission and subsequent submission to and approval by the District Commisisoners, as hereinafter provided. Before approval, the District Commissioners shall hold a public hearing on the proposed modification, notice of the time and place of which shall be given by mail sent at least ten days prior to the hearing to the then owners of the real properties in the project area and of the real properties immediately adjoining or across the street from the project area. The District Commissioners may refer back to the Planning Commission any project area redevelopment plan, project area boundaries, or modification submitted to it, together with their recommendation for changes in such plan, boundaries, or modification, and, if such recommended changes be adopted by the Planning Commission and be in turn approved by the District Commissioners, the plans, boundaries, or modification as thus changed shall be and become the approved plan, boundaries, or modification. (Aug. 2, 1946, 60 Stat. 798, ch. 736, § 12.)

"§ 5-712. Limitation upon tax exemption.

"Nothing contained in sections 5-701 to 5-719 shall be construed to authorize or require the exemption of

any real property from taxation. No real property acquired by the Agency under sections 5-701 to 5-719 shall be exempt from taxation by reason of such acquisition or by reason of the holding thereof by the Agency; and, in the case of any piece of real property, which, under the project a[illegible] redevelopment plan, is designated to be used for Federal or District or other tax-exempt uses, the exemption of such real property from taxation granted by or in sections 47-801a to 47-801b, or other statute, shall not commence until title thereto shall have been transferred from the Agency to the United States or the District of Columbia or to a Federal or District public agency as provided in section 5-706 or sold or leased to a public redevelopment company or other public corporation or tax-exempt agency and may thereby become exempt from taxation by reason of the provisions of statutes other than sections 5-701 to 5-719; the intention being that ownership or operation by the Agency in the exercise of its power under sections 5-701 to 5-719 shall not, in and of itself, produce tax exemption. (Aug. 2, 1946, 60 Stat. 799, ch. 736, § 13.)

"§ 5-713. Administrative expenditure and employment.

"The Agency is hereby authorized and empowered—

"(a) to procure services or make any purchase without regard to the provisions of section 3709 of the Revised Statutes, provided the aggregate amount involved is not more than $100;

"(b) to secure planning, land economics and valuation services, and other expert services related to the acquisition and disposition of real property, by contract or otherwise, at rates of pay or fees not to exceed those usual for similar services elsewhere, and without regard to the Classification Act of 1923, and to section 3709 of Revised Statutes, as amended; Provided, That this exemption shall not apply to persons employed by the Agency on a permanent basis;

"(c) to appoint and employ such officers and employees as it may find necessary for the proper performance of its duties under sections 5-701 to 5-719 and

to prescribe their authorities, duties, responsibilities, and tenures and fix their compensations; such appointments and employments to be made in conformance with the civil-service laws and the Classification Act of 1923, as amended; and

"(d) to make such expenditures, subject to audit under the general law, for the acquisition and maintenance of adequate vehicles, furnishings, equipment, supplies, books of reference, directories, periodicals, newspapers, printing and binding, and for such other expenses as may from time to time be found necessary for the proper administration of sections 5-701 to 5-719. (Aug. 2, 1946, 60 Stat. 799, ch. 736, § 14.)

"§ 5-714. Annual report.

"On or before the last day of September of each year the Agency shall make an annual report to Congress of its operations and expenditures for the immediately preceding fiscal year, said report to include a financial balance sheet of its entire operations hereunder, and a recital in such particularity as is feasible of what the Agency proposes to do during the next succeeding fiscal year. The Agency shall make such other and further reports, in such form and at such times as the Congress by concurrent resolution shall require. (Aug. 2, 1946, 60 Stat. 800, ch. 736, § 15.)

"§ 5-715. Appropriations authorized.

"(a) There is hereby authorized to be appropriated, out of any moneys in the Treasury of the United States not otherwise appropriated, whatever amounts are necessary to the Planning Commission, in addition to other funds which may be appropriated to it or private funds made available to it (the acceptance of which is hereby authorized), for the making or modification of a general or comprehensive plan and the making or modification of project area redevelopment plans and for surveys as authorized in sections 5-701 to 5-719, and other administrative expenses in connection therewith. The Commission is also authorized to re-

ceive any grants that the Congress may appropriate for said purposes to the various States and municipalities and the District of Columbia.

"(b) There is further authorized to be appropriated out of any moneys in the Treasury of the United States not otherwise appropriated, the sum of $20,000,000, which sum shall be placed to the credit of a special trust fund to be established for the purposes hereinafter set out. There shall be deposited in the Treasury of the United States and credited to said special trust fund all revenues, rentals, proceeds, and other funds received by the Agency. The said special trust fund is hereby made available to the Agency for the purpose of acquiring real property and performing any act required or authorized by sections 5-701 to 5-719. The Agency shall from time to time submit to the District Commissioners estimates of amounts for the reasonable and necessary expenses of the Agency, including personal services, and such amounts as may be approved by the District Commissioners shall be available from the said special trust fund for such expenses.

"(c) As of the last day of the tenth fiscal year beginning after approval of sections 5-701 to 5-719, or as of such later date as may be fixed by the Congress, there shall be transferred and credited to miscellaneous receipts of the United States the balance in the said special trust fund after deducting (a) such amount as may be necessary for the completion of any approved project the acquisition of which has been begun and (b) such amount for operating expenses of the Agency for one year as may be approved by the District Commissioners. If the balance so transferred and credited be insufficient to reimburse the United States for appropriations made pursuant to paragraph (b) of this section, then an amount equal to 50 per centum of the deficit shall be payable to the United States from revenues of the District of Columbia in installments of equal amounts for each of ten years. The District Commissioners shall include in their annual estimates of appropriations items for the payment of such in-

stallments. The aforesaid deficit shall be determined by deducting from the total of said appropriations an amount equal to (a) the fund transferred and credited to miscellaneous receipts of the United States, (b) the cost to the Agency of the real property owned by it on said date, and (c) the reserve for completion of approved projects. All subsequent proceeds, revenues, and rentals from said real property shall be credited to the said special trust fund, to be disposed of as the Congress may direct. (Aug. 2, 1946, 60 Stat. 800, ch. 736, § 16.)

"§ 5-716. Acquisition under District of Columbia Alley Dwelling Act.

"From and after the termination of the period of one year, beginning with the date of the approval of sections 5-701 to 5-719, all authority granted by sections 5-103 to 5-116, to acquire, by purchase, condemnation, or gift, lands, buildings and structures, or any interest therein, is hereby transferred to and vested in the Agency created by sections 5-701 to 5-719. During said one-year period said authority may be exercised by the National Capital Housing Authority only for projects that shall have been approved by the Planning Commission and the District Commissioners: Provided, however, That failure of the Planning Commission or the District Commissioners to approve or disapprove in writing within sixty days after the submission by the National Capital Housing Authority shall be equivalent to a formal approval. Nothing contained in sections 5-103 to 5-116 or in sections 5-701 to 5-719 shall be interpreted as precluding the inclusion at any time of any alley or inhabited alley or alley dwelling or dwelling or square containing an inhabited alley in a project area to be planned, acquired, and disposed of under the provisions of sections 5-701 to 5-719. Any real property acquired by the Agency under the authority of sections 5-103 to 5-116 may be transferred or may be sold or leased by the Agency as provided in sections 5-701 to 5-719 for real property ac-

quired for a project area redevelopment. The National Capital Housing Authority is hereby declared to be a redevelopment company and is hereby granted the power to purchase or lease redevelopment areas or parts thereof from the Agency in accordance with the provisions of sections 5-701 to 5-719. The National Capital Housing Authority shall keep regular books of account in accordance with standard auditing practices, covering all properties operated by it, showing detailed construction costs, management costs, repairs, maintenance, other operating costs, rents, subsidies, grants, allowances and exemptions; such books shall be subject to annual audit by the General Accounting Office; and the annual report of the National Capital Housing Authority shall include a summary of all transactions covered by such books and shall be made available to the public upon request. (Aug. 2, 1946, 60 Stat. 801, ch. 736, § 17.)

"§ 5-717. Encouragement and aid to private lending institutions.

"(a) To provide for and to facilitate the improvement of housing and other improved real estate in the District of Columbia, Federal savings and loan associations of the District of Columbia and building associations and building and loan associations operating under the laws of the District of Columbia are authorized, notwithstanding any other provision of law, to make loans for the improvement of homes or other improved real estate in the District of Columbia without security: Provided, That no such loan without security shall be made in a sum in excess of $2,000.

"(b) Any financial institution or other lending organization operating under the laws of the United States or the District of Columbia is authorized, notwithstanding any other law or regulation, to make loans to redevelopment corporations to finance the improvement of any project area as provided in sections 5-701 to 5-719. Any life-insurance company organized under the laws of the District or formed or organized

under an Act of Congress is authorized, notwithstanding any other provision of law, to make loans or advances for the purpose of making repairs, alterations, additions, or improvements to homes or other buildings on improved real estate upon which it then holds a first lien to secure a loan previously made, without additional security: Provided, That no such loan or advance shall be made in a sum in excess of $2,000: And provided further, That the amount of such loan or advance when added to the balance due on the original indebtedness shall not exceed the amount originally secured by the first lien. (Aug. 2, 1946, 60 Stat., 801, ch. 736 § 19.)

§ 5-717a. Acceptance of financial assistance authorized.

"(a) As an alternative method of financing its authorized operations and functions under the provisions of this chapter (in addition to that provided in section 5-815), the Agency is hereby authorized and empowered to accept financial assistance from the Housing and Home Finance Administrator (hereafter in this section referred to as the Administrator), in the form of advances of funds, loans, and capital grants pursuant to title I of the Housing Act of 1949, to assist the Agency in acquiring real property for redevelopment of project areas and carrying out any functions authorized under this chapter for which advances of funds, loans, or capital grants may be made to a local public agency under title I of the Housing Act of 1949, and the Agency, subject to the approval of the District Commissioners and subject to such terms, covenants, and conditions as may be prescribed by the Administrator pursuant to title I of the Housing Act of 1949, may enter into such contracts and agreements as may be necessary, convenient, or desirable for such purposes.

"(b) Subject to the approval of the District Commissioners, the Agency is authorized to accept from the Administrator advances of funds for surveys and plans in preparation of a project or projects authorized by this chapter which may be assisted under title I of

the Housing Act of 1949, and the Agency is authorized to transfer to the Planning Commission so much of the funds so advanced as the District Commissioners shall determine to be necessary for the Planning Commission to carry out its functions under this chapter with respect to the project or projects to be assisted under Title I of the Housing Act of 1949.

"(c) The District Commissioners are authorized to include in their annual estimates of appropriations items for administrative expenses which, in addition to loan or other funds available therefor, are necessary for the Agency in carrying out its functions under this section.

"(d) Notwithstanding the limitation contained in the last sentence of section 110 (d) or in any other provision of title I of the Housing Act of 1949, the Administrator is authorized to allow and credit to the Agency such local grants-in-aid as are approvable pursuant to said section 110 (d) with respect to any project or projects undertaken by the Agency under a contract or contracts entered into under this section and assisted under title I of the Housing Act of 1949. In the event such local grants-in-aid as are so allowed by the Administrator are not sufficient to meet the requirements for local grants-in-aid pursuant to title I of the Housing Act of 1949, the District Commissioners are hereby authorized to enter into agreements with the Agency, upon which agreements the Administrator may rely, to make cash payments of such deficiencies from funds of the District of Columbia. The District Commissioners shall include items for such cash payments in their annual estimates of appropriations, and there are hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, the amounts necessary to provide for such cash payments. Any amounts due the Administrator pursuant to any such agreements shall be paid promptly from funds appropriated for such purpose.

"(e) All receipts of the Agency in connection with any project or projects financed in accordance with this

section with assistance under title I of the Housing Act of 1949, whether in the form of advances of funds, loans or capital grants made by the Administrator to the Agency, or in the form of proceeds, rentals, or revenues derived by the Agency from any such project or projects, shall be deposited in the Treasury of the United States to the credit of a special fund or funds, and all moneys in such special fund or funds are hereby made available for carrying out the purposes of this chapter with respect to such project or projects, including the payment of any advances of funds or loans, together with interest thereon, made by the Administrator or by private sources to the Agency. Expenditures from such fund shall be audited, disbursed, and accounted for as are other funds of the District of Columbia.

"(f) With respect to any project or projects undertaken by the Agency which are financed in accordance with this section with assistance under title I of the housing Act of 1949—

"(1) sections 5-702 (f), 5-702 (k), and 5-706 (g) and the last sentence of section 5-705 (b) (2) shall not be applicable to those pieces of real property which, in accordance with the approved project area redevelopment plan, are to be devoted to public housing to be undertaken under Public Law 307, Seventy-third Congress, approved June 12, 1934, as amended;

"(2) the site and use plan for the redevelopment of the area, included in the redevelopment plan of the project area pursuant to section 5-705 (b) (2) shall include the approximate extent and location of any land within the area which is proposed to be used for public housing to be undertaken under Public Law 307, Seventy-third Congress, approved June 12, 1934, as amended;

"(3) notwithstanding any other provisions of this chapter, the Agency, pursuant to section 5-706 (a), shall have power to transfer to and shall at a practicable time or times transfer by deeds to the National Capitol Housing Authority those pieces of real property which, in accordance with the approved project

area redevelopment plan, are to be devoted to public housing to be undertaken under Public Law 307, Seventy-third Congress, approved June 12, 1934, as amended, and, in accordance with the requirements of section 107 of the Housing Act of 1949, the National Capital Housing Authority shall pay for the same out of any of its funds available for such acquisition.

"(g) It is the purpose and intent of this section to authorize the District Commisisoners and the appropriate agencies operating within the District of Columbia to do any and all things necessary to secure financial aid under title I of the Housing Act of 1949. The District of Columbia Redevelopment Land Agency is hereby declared to be a local public agency for all of the purposes of title I of the Housing Act of 1949. As such a local public agency for all of the purposes of title I of the Housing Act of 1949, the Agency is also authorized to borrow money from the Administrator or from private sources as contemplated by title I of the Housing Act of 1949, to issue its obligations evidencing such loans, and to pledge as security for the payment of such loans, and the interest thereon, the property, income, revenues, and other assets acquired in connection with the project or projects financed in accordance with this section with assistance under title I of the Housing Act of 1949, but such obligations or such pledge shall not constitute a debt or obligation of either the United States or of the District of Columbia.

"(h) Nothing contained in this section or in any other section of this chapter shall relieve the Administrator of his responsibilities and duties under section 105 (c) or any other section of the Housing Act of 1949. The Administrator shall not enter into any contract of financial assistance under title I of this chapter with respect to any project of the District of Columbia Redevelopment Land Agency for which a budget estimate of appropriation was transmitted pursuant to law and for which no appropriation was made by the Congress. (July 15, 1949, 63 Stat. 441, ch. 338, § 609).

"§ 5-718. Effect upon existing statutes.

"(a) In the making and approval of project area redevelopment plans, the Planning Commission and the District Commissioners shall not be limited or bound by the provisions of sections 7-108, 7-117, 7-122, and 7-301 relating to width, location, and length of streets and highways. No department, instrumentality, agency, or official of the Federal Government or of the District of Columbia shall have any power to release or modify or depart from any feature or detail of an approved redevelopment plan or part thereof unless such release, modification, or departure be adopted by the Planning Commission and approved by the District Commissioners in accordance with the provisions of section 5-711 or unless the modification or departure be approved by Act of Congress.

"(b) Any power granted the District Commissioners or any District or Federal agency by the District of Columbia Code or by any statute, may, in addition to the purposes now specified, be exercised in furtherance of the protection or carrying out of any redevelopment plan or modification made and approved under sections 5-701 to 5-719. (Aug. 2, 1946, 60 Stat. 802, ch. 736, § 20.)

"§ 5-719. Separability of provisions.

"If any provisions of sections 5-701 to 5-719 or the application thereof to any body, agency, situation, or circumstances be held invalid, the remainder of sections 5-701 to 5-719 and the application of such provision to other bodies, agencies, situations, or circumstances shall not be affected thereby. (Aug. 2, 1946, 60 Stat. 802, ch. 736, § 21.)"

Date of Judgment and of Petition for Appeal

3. The judgment appealed from was entered in the United States District Court for the District of Columbia on November 20, 1953, as appears from copy of opinion and order attached hereto as Appendix A.

4. The petition for appeal was presented for approval on December 21, 1953.

Substantial Nature of the Questions Involved and Showing of Abuse of Discretion in Dismissing the Complaint

5. This appeal is based upon the judgment of the United States District Court for the District of Columbia, which dismissed plaintiff's complaint for temporary and permanent injunction, mandatory injunction, and declaratory judgment, and held the District of Columbia Redevelopment Act of 1945 to be constitutional as appears from the opinion and order attached hereto and prayed to be read as part hereof.

The complaint set out that the plaintiff, Max R. Morris, is the owner of premises 712-4th Street, S. W., Washington, D. C., which property is in commercial use, being improved by a department store. No part of said premises is used as a dwelling, residence, house or habitation. On or about October 24, 1952, the defendants, the National Capital Park and Planning Commission, purporting to act under the District of Columbia Redevelopment Act of 1945, adopted a plan known as "Redevelopment Plan for Southwest Redevelopment Project Area B." This plan called for the taking of plaintiff's commercial property without due process of law through the guise of the processes of eminent domain or otherwise for a private use, to wit, its lease or sale to private individuals, partnerships, ventures or corporations for development and use as private commercial property. On or about December 30, 1952, the defendants, the Board of Commissioners of the District of Columbia approved the said plan for the taking of plaintiff's property for a private use and without due process of law. The defendants, the District of Columbia Redevelopment Land Agency, their agents and employees are now proceed-

ing or are threatening immediately to proceed through the guise of eminent domain or otherwise to take the property of plaintiff for a private use, without due process of law.

The District of Columbia Redevelopment Act of 1945, under which the defendants purport to act, authorizes the taking of private property for a use other than a public use. Said act authorizes the sale or lease of property taken under the theory of eminent domain to private parties for their own development and gain, which is a taking without due process of law and hence unconstitutional. The administrative action of the three defendants, the National Capital Park and Planning Commission, the Board of Commissioners of the District of Columbia and the District of Columbia Redevelopment Land Agency in taking real property pursuant to the Act named above, amounts to a taking without due process of law and hence is unconstitutional.

In paragraph eleven of the Complaint the plaintiff further states that the proposed taking of his real property is not authorized by the District of Columbia Redevelopment Act of 1945 in that this Act authorizes only the taking of land used for housing, dwelling, habitation or residence purposes. But the property of the plaintiff is in commercial use, a department store. Further that the taking of his property is not for a public use but rather for a private use, i. e., the sale or lease to another private party or corporation to be commercially developed by said party or corporation. For both of the above reasons the plaintiff declares that the plan, approval and taking, as regards his property, are null and void.

The plaintiff contends that he will be irreparably damaged unless the Court enjoins the defendant, the District of Columbia Redevelopment Land Agency from taking, or proceeding to take, his property. He asks further that the Court declare the District of Columbia Redevelopment Act

of 1945 to be unconstitutional in and of itself and also as implemented by the "Redevelopment Plan for Southwest Redevelopment Project Area B." That insofar as said plan applies to his property it is null and void and that the defendants should be ordered to amend the plan by deleting therefrom provisions for the taking of his property.

To the Complaint the defendants filed a Motion to Dismiss on the ground that the Complaint failed to state a claim upon which relief can be granted. Defendants filed in the alternative a Motion for a Summary Judgment on the ground that defendants are entitled to judgment as a matter of law. Plaintiff filed opposition to above-named motions and a Cross-Claim for Summary Judgment.

The grounds upon which it is contended that the questions involved herein are substantial and that the rulings of the Court below were such as to bring the case within the jurisdiction provision relied upon herein, are:

The District of Columbia Redevelopment Act of 1945 is unconstitutional in that the taking of private property for City redevelopment per se is not a public use. In *Adams* v. *Housing Authority of City of Daytona*, 60 So. (2d) 663; 666, 668, the Supreme Court of Florida held in a test of a Florida Redevelopment Act which is very similar to the instant one: "The question in this case is not simply the abatement or discontinuance of a nuisance or blighted area. This is not simply a case of slum clearance in order to promote the public health, safety, morals and general welfare of the inhabitants and citizens of Daytona Beach. On its face it is a 'redevelopment' plan and a mere inspection of the plan shows it to be a real estate promotion. The very words of the plan declare it to be for the purpose of acquiring title to and ownership of several blocks of property constituting six and one half acres now used for resi-

dences to be redeveloped and sold or leased to private individuals, associations or corporations for private commercial and industrial purposes. As will be shown hereafter, it is not the purpose of the plan to acquire this land to erect new residences to be rented to persons in the low income brackets * * *"

"It is inconceivable that any one would seriously contend that the acquisition of real estate for the declared purposes set forth in the proposed Redevelopment Plan is for a public use or purpose. No one has ever heard of any corporation, association or individual going into any of the above-mentioned businesses except for profit or gain. If the municipalities can be vested with any such power or authority, they can take over the entire field of private enterprise without limit so long as they can find a blighted area containing sufficient real estate."

The Supreme Court of Georgia followed this same ruling in *Housing Authority of City of Atlanta* v. *Johnson*, 74 S. C. (2d) 891. In the *Matter of The New York City Housing Authority* v. *Andrew Muller*, 270 N. Y. 333, 342, "Legislation merely restrictive in its nature has failed because the evil inheres not so much in this or that individual structure as in the character of a whole neighborhood of delapidated and unsanitary structures. To eliminate the inherent evil and to provide housing facilities at low cost—the two things necessarily go together—require large scale * * *." (P. 343) Nothing is better settled than that the property of one individual cannot, without his consent, be devoted to the private use of another, even where there is an incidental or colorable benefit to the public. The facts here present no such case. In a matter of far-reaching public concern, the public is seeking to take the defendant's property and to administer it as part of a project conceived and to be carried out in its own interest and for its own protection."

The New York State Legislature recognized the necessity for amending their State Constitution to insert the necessary language which would allow a Redevelopment Act in the State. This was done by Amendment 18, Constitution of the State of New York. The necessity for such amendment was recognized by the Courts of New York in the case of *Murray* v. *La Guardia*, 291 N. Y. 320, and *Neufield* v. *O'Dwyer*, 79 N. Y. S. 53. The majority of States whose Courts have been concerned with the question of whether or not Redevelopment laws are constitutional have amended their respective Constitutions. In the case of the District of Columbia, while Congress is authorized to legislate for the said District in the same fashion as a State Legislature may legislate for its particular State, yet Congress is bound by the Constitution of the United States which has not been amended.

Granting that said redevelopment per se is a public use, still when it is connected with the other provisions of the District of Columbia Redevelopment Act and construed as a whole, it clearly violates the Fifth Amendment of the Constitution. The first portion of this Act provides for the taking and leveling of the alleged slum or blighted area. Certainly in this Section the "public use" does not require the transfer of title to the property. In determining whether or not this Act is constitutional, the entire Act in its entirety must be considered. Referring to Title 5-706 of the instant Act which is entitled "Transfer, Lease or Sale of Real Property in Project Area for Public and Private Use," the Court will note that paragraph (a) of this Section is a perfect example of a true "public use". Paragraph (b) simply states that the Agency shall have the power to lease or sell the remainder of the project area as an entirety to a redevelopment company or to an individual or a partnership * * *. Clearly this Section provides that the property shall be disposed of to private individuals or parties.

Brown and Others v. *The United States*, 263 US 78, 82, "The transaction is not properly described as the condemnation of the land of one private owner to sell it to another. The incidental fact that, in the substitution and necessary adjustment of the exchanges, a mere residuum of the town site lots may have to be sold does not change the real nature of what is done, which is that of a mere transfer of the town from one place to another at the expense of the United States." Earlier in the same case at page 81, the Court said, "It was a natural and proper part of the construction of the dam and reservoir to make provisions for a substitute town as near as possible."

Referring to the case of *United States ex rel. Tennessee Valley Authority* v. *Welch*, 327 US 546, the Government contends that the Supreme Court liberalized the power of eminent domain. Further the Act itself sets forth that it should be liberally construed and defines the "public use" toward which the land which was to be taken was to be used. In the case of *United States* v. *Gettysburg Electric Railway Company*, 160 US 668, 679, the Court states, "The really important question to be determined in these proceedings is, whether the use to which the petitioner desires to put the land described in the petition is that kind of public use for which the Government of the United States is authorized to condemn land.

"It has authority to do so whenever it is necessary or appropriate to use the land in the execution of any of the powers granted to it by the Constitution.

"Is the proposed use to which this land is to be put a public use within this limitation?"

This question may well be asked of the District of Columbia Redevelopment Act when considered in its entirety. The Court in the same case on page 680 stated, "The responsibility of Congress to the people will generally, if not always, result in a most conservative exercise of the right. It is quite a different view of the question which

Courts will take when this power is delegated to a private corporation. In that case the presumption that the intended use for which the corporation proposes to take the land is public, is not so strong, as where the Government intends to use the land itself.

Chief Justice Marshall best summed up the fashion in which the Court should examine a statute in testing its constitutionality when he stated in *McCulloch* v. *Maryland*, 4 Wheat, 316, 421, "Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adequate to that end, which are not prohibited but consist with the letter and spirit of the Constitution are constitutional."

Title 5-706 referred to above certainly makes it clear that the Administration Agency appointed by Congress to administer the statute are unable to do more than merely fix the area to be redeveloped, level the structures thereon and then sell the land to private enterprise.

The plaintiff in this action is the owner of property which is strictly and entirely commercial property. He contends that the Act does not authorize the taking of commercial property but rather refers only to dwellings and housing units. A reference to Title 5-704 of the Act shows that the power to acquire and assemble real property by various means is subject to and in accordance with the procedures, conditions and other provisions in the other Sections of the Act. Title 5-701 which states the general purpose of the Act, by inference states that the principal purpose is to eliminate substandard housing, blighted areas, including the use of buildings in alleys as dwellings for human habitation. Further, in the same Section, the purpose is stated as being to effectuate the discontinuance of the use for human habitation in the District of Columbia of substandard dwellings and of buildings in alleys and blighted areas, and thereby to eliminate the substandard housing

conditions and the communities in the inhabited areas and blighted areas in such district. The whole tenure of the purpose of the Act is directed toward housing. *Fay* v. *Macfarland*, 32 App. D.C. 295, "Statutes like the present, authorizing the taking of private property for public use, are to be strictly construed."

The District of Columbia Redevelopment Act constitutes an unconstitutional delegation of legislative power to the administrative agencies because of the absence of any ascertainable standards for guidance in carrying out its functions.

Let us examine the limits or standards contained in this Act:

1. It is a matter of legislative determination that owing to
   (a) technological and sociological changes,
   (b) obsolete lay-out, and
   (c) Other factors, with respect to substandard housing and *blighted areas* including the use of buildings in alleys as dwellings * * * (emphasis supplied).

In Title 5-702, which is entitled "Definitions", the sole standard which is set to cover this legislative determination is "substandard housing conditions". There is no definition of "blighted areas" nor "obsolete lay-out", nor "other factors". In the case of *Yakus* v. *United States*, 321 US 414, 426, "Only if we could say that there is an absence of standards for the guidance of the Administrator's action, so that it would be impossible in a proper proceeding to ascertain whether the will of Congress has been obeyed, would we be justified in overriding its choice of means for affecting its declared purpose of preventing inflation."

American Power Co. v. *Securities Exchange Commission*

329 US 90, 105, "Necessity therefore fixes a point beyond which it is unreasonable and impracticable to compel Congress to prescribe detailed rules; it then becomes constitutionally sufficient if Congress clearly delineates the general policy, the public agency which is to apply it, and the boundaries of this delegated authority. Private rights are protected by access to the Courts to test the application of the policy in the light of these legislative declarations. Such is the situation here." In the local redevelopment law there are no boundaries set out as to what land constitutes "blighted areas". *Latto* v. *United States* 157 F(2) 623, 628, "As stated by the Supreme Court in upholding Emergency Price Control Act in Yakus v. United States 321 US 414, 424, 425, 'The essentials of the legislative functions are the determination of the legislative policy and its formulation and promulgation as a defined and binding rule of conduct—here the rule, with penal sanctions, that price shall not be greater than those fixed by maximum price regulations which conform to standards and will tend to further the policy which Congress has established. These essentials are preserved when Congress has specified the basic conditions of fact upon whose existence or occurrence, ascertained from relevant data by a designated administrative agency, it directs that its statutory command shall be effective. It is no objection that the determination of facts and the inferences to be drawn from them in the light of the statutory standards and declaration of policy call for the exercise of judgment, and for the formulation of subsidiary administrative policy within the prescribed statutory framework'."

In the case of *United States* v. *Dettra Flag Company*, 86 F(Supp.) 84, 86, "Beginning with Field v. Clark, 143 US 649, through to the present, the general legal dogmas which control delegation of ministerial duties have been evolved.

Congress must establish definite standards to be followed and policies to be effectuated, * * * * Within these standards the Administrator may exercise his discretion in the application and enforcement of the statute in order to carry out its purpose. Congress may not delegate nor may an Administrator usurp the legislative function. Intelligent principles and definite standards must be stated to guide, control and limit the execution of the statute; they cannot be left to the Administrator's discretion."

Numerous States have held statutes similar to the instant one to be constitutional. However, an examination of these various statutes which have been so held by their respective State Courts will disclose that the statutes themselves clearly define what is meant by "blighted area", "substandard housing", and other terms associated in the statute. Such is not the case with the District of Columbia Redevelopment Act. There are no boundaries which will limit the action of the administrative body and tell that body exactly what is and what is not to be considered as property to be taken.

Conclusion

This appeal is within the exclusive jurisdiction of the Supreme Court and presents substantial questions of the greatest importance requiring review of the order of the three-judge Court which recognized the substantial nature of the questions in its opinion.

Respectfully submitted,

JAMES C. TOOMEY,
JOSEPH H. SCHNEIDER,
ALBERT GINSBERG,
Counsel for Appellant.

APPENDIX "A"

OPINION OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil Action No. 5791-52

GOLDIE SCHNEIDER, Plaintiff,

v.

DISTRICT OF COLUMBIA, et al.

Civil Action No. 476-53

MAX R. MORRIS, Plaintiff,

v.

THE DISTRICT OF COLUMBIA REDEVELOPMENT LAND AGENCY, et al.

Before PRETTYMAN, Circuit Judge, and CURRAN and KEECH, District Judges, sitting as a statutory three-judge court.

OPINION—Filed November 5th, 1953

PRETTYMAN, *Circuit Judge:* These are two civil actions, consolidated, in which the constitutionality of the District of Columbia Redevelopment Act of 1945[1] is challenged. The defendant Government bodies and officials filed motions to dismiss or, in the alternative, for summary judgment. Affidavits, with exhibits attached, were annexed to the motions. The plaintiffs filed cross-motions for summary judgment.

The plaintiffs are the owners of properties, one at 712 and the other at 716 Fourth Street, Southwest, both in the District of Columbia. One property is a department store

[1] 60 STAT. 790, D. C. CODE § 5-701 *et seq.* (1951).

owned and operated by the plaintiff Morris, and the other property is a retail hardware store owned and operated by the plaintiff Schneider. The defendants are the members of the District of Columbia Redevelopment Land Agency, that Agency itself (a corporation), the members of the National Capital Park and Planning Commission (called in this statute the "Planning Commission"), the members of the Board of Commissioners of the District of Columbia, and the District of Columbia, a municipal corporation. The properties of the plaintiffs are located within the boundary lines of an area known in this litigation as "Project Area B".

This is the first project undertaken under the Redevelopment Act. The Planning Commission first published a Comprehensive Plan for the whole District of Columbia. Then it prepared a "Land Use Plan" for an area called the "Southwest Survey Area", which includes almost the whole of Southwest Washington. That plan, the Commission report says, "includes the Commission's proposals for the distribution of the basic land uses in the Survey Area, the population to be accommodated, the proportions of different housing types and the amount of low-rent housing which should be provided." The report recites as two of the principal proposals for the survey area:

> "1. That the area continue to house about the same number of families.
>
> "2. That the plan induce balanced and protected residential neighborhoods for all income groups, with approximately one-fourth of the housing designated for low-income families."

The locations of other survey areas have been prepared by the Commission, one a Northwest Survey Area and one a Southeast Survey Area. Out of the Southwest Survey Area the Commission selected a part, to be known as Project Area B, for the first redevelopment project. This is what is now before us.

The proposal of the Commission was approved by the Board of Commissioners of the District of Columbia. Thereafter the Planning Commission adopted a redevelop-

ment plan for the area. The Land Agency made a detailed survey, using techniques considered standard by public authorities. A total of 1345 dwelling units in 1006 structures in the area housed a population of 5012. The survey indicated that 57.8 per cent of the dwellings depended upon outside toilets, 60.3 per cent had no "baths", 80.2 per cent no wash basins or laundry tubs, 29.3 per cent no electricity, and 83.8 per cent no central heating. The survey indicated that 64.3 per cent of the dwellings in the area were beyond repair and 18.4 per cent needed some major repairs.

After a public hearing the Commissioners approved the proposed redevelopment plan, and the Planning Commission certified it to the Land Agency for execution. Having obtained the necessary funds for preliminary steps from the Federal Housing and Home Finance Administrator, the Land Agency advertised for proposals to negotiate for the purchase or lease of land in the project area. After due consideration the Agency accepted the proposals of five bidders who owned property in the area (Safeway Stores, Inc., Martin Wiegand, Inc., Eagle Transfer Company, Max Greenwald, and Rudderforth Brothers), each to repurchase its present property, and of the Bush Construction Company for the remainder of the area.

The boundary of the project area is a line beginning at South Capitol and Eye Streets, running west to Fourth Street, north on Fourth Street, around Lots 89 and 90 in Square 541; thence further north on Fourth Street, around Lot 70 in Square 497; thence west along H Street, around Lot 43 in Square 497; thence east along G Street back to Fourth Street to the rear of lots facing on Fourth Street; thence north 95.75 feet, east 3 feet, north 16 feet, east 25 feet, north 150 feet, west 25 feet, north 61.75 feet to the south line of F Street; thence east along F Street 25 feet, north 282 feet, around Lot 16 in Square 538; thence east along E Street to the property line of the P. B. and W. railroad; thence along that boundary to South Capitol Street and to the point of beginning. From this described boundary five lots owned by the trustees of the Friendship Baptist Church were eliminated.

In an affidavit the Director of Public Health for the

District of Columbia characterizes Project Area B as a slum area "characterized particularly by the lack of those things which make for a good community." Attached to his affidavit are statistics of the Bureau of Vital Statistics of the District Health Department for Census Tract No. 60, within which Project Area B lies, being about one-half the residential-commercial area in the Tract. The figures for the year 1951 are:

	Census Tract No. 60	Entire District of Columbia
Death Rates Per 1000 Population	15.6	10.1
Death Rates from Tuberculosis Per 100,000 Population	83.7	35.5
Death Rates from Syphilis Per 100,000 Population	41.8	7.1

The redevelopment plan for Project Area B (a copy of which was attached as Appendix E to the affidavit of the Assistant Secretary of the Planning Commission) shows that the land use allocations designated in the plan are:

	Per Cent
Residential	31.6
First Commercial	5.1
Second Commercial	6.7
Public Uses	15.3
Expressway	18.5
Streets	22.8

The plan provides for from 750 to 900 dwelling units, of which from 40 to 50 per cent are to be row houses and two-story flats and from 50 to 60 per cent are to be apartment houses. The maximum densities (that is, the number of dwelling units per net acre) are to be 25 row houses, 40 in two-story flats, and 43.5 in apartment houses. The need for accommodations is recited in the plan to be the following for different sizes of families: 30 per cent of the accommodations for families of two, 25 per cent for families of three, 20 per cent for families of four, 20 per cent for fami-

lies of five, and 5 per cent for families of six or more. Accordingly it is provided that at least 60 per cent of the total dwelling units shall have two bedrooms or more and at least 20 per cent three bedrooms or more. The plan requires that not less than one-third of the dwelling units in the area shall be low-rent units, which means that the maximum rental shall be $17.00 per room per month, excluding utilities. The plan provides for off-street parking space and enclosed play space. It provides that the instruments of lease or sale shall include a condition that the use of the land in the area shall conform to the redevelopment plan.

The full texts of the pertinent sections of the Redevelopment Act are attached as an Appendix. They can be summarized. Congress declared it to be a matter of legislative determination that, owing to technological and sociological changes, obsolete layout, and other factors, conditions existing in the District of Columbia with respect to substandard housing and blighted areas are injurious to the public health, safety, morals and welfare. It declared that control by regulatory processes has proved inadequate and insufficient. It declared that in its judgment it is necessary to acquire property by gift, purchase, or the use of eminent domain to effectuate the discontinuance of the use for human habitation of substandard dwellings and of buildings in alleys of blighted areas, and that it is necessary to modernize the planning and development of such portions of the District. Procedure under the Act is divided between two governmental agencies. The Planning Commission is directed to make a general plan for the District of Columbia which will serve as a guide of development within which various project areas may be planned. That Commission is authorized to adopt boundaries for a "project area." Such an area is defined as an appropriate unit of redevelopment planning. "Redevelopment" is defined to mean replanning, clearance, redesign and rebuilding of project areas. "Substandard housing conditions" is defined to mean conditions obtaining in connection with the existence of housing accommodations for human beings which, be-

cause of lack of sanitary facilities, ventilation or light, or because of dilapidation, overcrowding, faulty interior arrangement, or any combination of these factors, are in the opinion of the Commissioners detrimental to the safety, health, morals, or welfare of the inhabitants of the District of Columbia. The Commission is authorized to adopt a redevelopment plan for the area, which shall contain a site and use plan, specifications of standards of population density and building intensity, and, by specification of maximum rentals or otherwise, the amount or character of any low-cost housing for which the area is to be redeveloped. A project area redevelopment plan must be approved by the Commissioners of the District of Columbia. Thereafter the plan is to be certified to the Land Agency, a body of five members created for the purposes of this statute. To further the redevelopment of blighted territory and the prevention, reduction or elimination of blighting factors or causes of blight, the Agency is authorized to acquire the land in the area by purchase, gift, or eminent domain. For this purpose the Agency is authorized to bring condemnation proceedings. After the acquisition of title to the property the Agency is to transfer to the United States or the District of Columbia those pieces which are to be devoted to public uses (other than public housing), and the Agency is authorized to lease or sell the remainder of the project area to a redevelopment company or an individual or partnership, or to sell or lease parts of the area separately. While the Agency is given power to determine the terms of a lease or sale, it is required to provide that the lessee or purchaser shall carry out the approved redevelopment plan. The statute requires that, prior to approval by the District Commissioners of the redevelopment plan, they must satisfy themselves that housing is available at rents within the reach of the low-income families to be displaced from the project area. The District agencies are authorized to secure financial aid under Title 1 of the Federal Housing Act of 1949. The Redevelopment Agency is authorized to borrow money either from the Housing Administrator or from private sources as contemplated by that statute.

The critical features of the statute are: (1) It is premised upon the phrase which is the traditional definition of the police power—public health, safety, morals and welfare. (2) Congress declared the policy of the United States to be to protect the welfare of the inhabitants of the District by eliminating conditions injurious to the public health, etc. (3) Congress declared that the acquisition of real property and the leasing or sale thereof pursuant to a project area redevelopment plan is a public use. (4) The phrase "substandard housing conditions" is defined, but the phrase "blighted area" is not specifically defined. (5) For the purpose of preventing, reducing or eliminating "blighting factors or causes of blight" Congress authorized the acquisition of the title to the real estate by condemnation proceedings under the power of eminent domain. (6) Congress provided for the lease or sale of the property in a project area to private persons. (7) The uses to which the property, having been sold, could be put by the purchaser were limited, in that such uses must conform to the redevelopment plan. (8) Congress required that the District Commissioners prior to approval of any redevelopment plan, should be satisfied that adequate housing is available to the low-income families to be displaced.

The plaintiffs say that the Redevelopment Act itself is unconstitutional on two grounds, (1) that it authorizes the taking by eminent domain of the fee title to private property and the sale or lease of that title to other private persons for private uses; and (2) that the statute authorizes the taking of property in "blighted areas" without defining that term and thus fails to establish any standard sufficiently definite to sustain the delegation of power. They also say that the statute is unconstitutional in its application to the properties of the plaintiffs, which are commercial properties; that the statute should be construed strictly and, as thus construed, does not apply to commercial property or to any property upon which slum conditions do not exist. The respondent Government agencies and officials say that the Act is constitutional, that the constitu-

tionality of statutes similar in all substantial respects to the local statute has been sustained by the highest courts of many states and by the Supreme Court of the United States; that the elimination of slum areas, injurious to the public health, safety, morals and welfare, is a public purpose; that the condemnation of title to the property in the entire Project Area B is incidental and essential to the elimination of the slum area; that, since Congress has declared the condemnation of fee title to this property, the courts are without power to disturb that declaration; that Congress has validly delegated to the administrative agencies the power to determine the boundaries of a redevelopment area project.

We can quickly dispose of the case in so far as it relates to certain parts of the property in the project area. The power to acquire by eminent domain property to be devoted to streets (including the "expressway"), schools, recreation centers, parks (including the "greenway"), and other "public uses" is established beyond question. Likewise the power to acquire by eminent domain real estate to be used for the construction of low-cost housing is established in this jurisdiction by *Keyes* v. *United States*.[2] Our problem concerns the remainder of the property in the area, which is to be acquired by eminent domain and sold or leased to private persons for private uses, with the provision that not less than one-third of the housing accommodations to be built on the property are to be for low-rent housing.

We can at once eliminate from consideration the possibility that the redevelopment plan for Project Area B is a low-rent housing project. In specifying that one-third of the dwellings be for low rent, the redevelopment plan specifically says:

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[2] 73 App. D.C. 273, 119 F.2d 444 (1941), *cert. denied*, 314 U.S. 636, 86 L.Ed. 510, 62 S.Ct. 70 (1941).

> "With the well-known scarcity of low-rent housing throughout the city there will undoubtedly always be tenants for this type of property. More low-rent units would be economically feasible but it was not deemed desirable to have too high a proportion of one economic group concentrated in one area."

We also dispose at once of plaintiffs' contention that the application of the Act to commercial properties is without due process of law because not authorized by the Act. The Act applies alike to all properties which meet the conditions laid down in it. It[3] authorizes the acquisition by condemnation of "real property" for the purpose of the Act and defines "real property"[4] without differentiation between kinds.

At the beginning of our consideration we note some opinions of the United States Supreme Court which are cited to us and which have dealt with the boundaries of the power of eminent domain. The basic case is *Fallbrook Irrigation District* v. *Bradley*.[5] The case involved an irrigation act of the State of California, and the question was whether the construction of irrigation works is a public purpose. The California statute and the highest court of the State had declared it to be a public purpose. The Supreme Court of the United States held that, while the conclusions by the legislative and judicial branches of the state government are not conclusive and binding, the answer to the question frequently and largely depends upon the facts and circumstances surrounding the particular subject matter. It held that the people of California must be more familiar with such circumstances in that State than any stranger could be and that because of this familiarity the declarations of

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[3] 60 Stat. 793 (1946), D. C. Code § 5-764 (1951).

[4] 60 Stat. 792 (1946), D. C. Code § 5-702(m) (1951).

[5] 164 U.S. 112, 41 L.Ed. 369, 17 S.Ct. 56 (1896).

the people, legislature and courts of California must be treated with very great respect. The Court held that if irrigation of lands were not a public purpose no general scheme of irrigation could be formed or carried into effect, because without the power to take property by condemnation it would be impossible to acquire the necessary land. The Court held that this fact, while not conclusive, was a most important consideration, because otherwise millions of acres otherwise cultivable would be left in their arid and worthless condition. Taking all the facts into consideration the Court concluded that "the irrigation of really arid lands is a public purpose."[6] The Court further held that, since the question as to what land should be subjected to irrigation was one of fact, the decision of the legislature, or its delegated agent, upon that question was, in the absence of actual fraud or bad faith, conclusive.

In *Clark* v. *Nash*[7] the Court applied the doctrine of the *Fallbrook* case to an irrigation project in the State of Utah, although the project, authorized by a State statute, was the condemnation of land by an individual for the purpose of irrigating his own land. The Court was careful to caution that the decision did not approve a general rule that private property might be taken in any case to promote the public interest; the decision was based upon the particular facts of the case, involving peculiarities of the use of water in the arid and mountainous states of the West and a recognition that differences in climate and soil rendered necessary different rules in different states. In *Strickley* v. *Highland Boy Gold Min. Co.*[8] the Court applied the doctrine of *Clark* v. *Nash* to the condemnation of a right-of-way by a mining corporation for an aerial bucket

[6] *Id.*, 164 U.S. at 164, 41 L.Ed. at 390.

[7] 198 U.S. 361, 49 L.Ed. 1085, 25 S.Ct. 676 (1905).

[8] 200 U.S. 527, 50 L.Ed. 581, 26 S.Ct. 301 (1906).

line across a placer mining claim. The Court held that, in view of the conditions respecting mining in the State of Utah and the findings of the State authorities upon the necessity, it would not say that those authorities were wrong, that in such unusual cases the Fourteenth Amendment did not prevent a state from requiring concessions from private individuals. In *Hairston* v. *Danville & W. Ry.*[9] the Court applied the doctrine of the three cases we have discussed to the condemnation of land for a spur railroad track and concluded that upon the facts of the case, and certain testimony in particular, the use involved was clearly public.

Joslin Co. v. *Providence*[10] dealt with the condemnation of land for the construction of a city water supply system, undoubtedly a public use. The opinion is pertinent here because the Court laid down the rule, citing a line of cases, that, public purpose having been established, the necessity of condemning property for that use is a legislative question and not a judicial question. In *Rindge Co.* v. *Los Angeles*,[11] decided the same day, the Court applied the same rule, making clear, by sharply dividing the opinion, that the nature of a use, whether public or private, is ultimately a judicial question, but that the public necessity of taking particular property for that use is a legislative and not a judicial question and may be delegated by the legislature to public officials.

This brings us to *Brown* v. *United States*,[12] in which the opinion was delivered by Mr. Chief Justice Taft. The case involved the power of Congress to condemn land. The construction of a reservoir on the Snake River in Idaho re-

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[9] 208 U.S. 598, 52 L.Ed. 637, 28 S.Ct. 331 (1908).

[10] 262 U.S. 668, 67 L.Ed. 1167, 43 S.Ct. 684 (1923).

[11] 262 U.S. 700, 67 L. Ed. 1186, 43 S.Ct. 689 (1923).

[12] 263 U.S. 78, 68 L.Ed. 171, 44 S.Ct. 92 (1923).

sulted in the flooding of three-fourths of the town of American Falls. In order to provide a new site for the town, to which the buildings were to be removed, the Government, having purchased part of the needed property, instituted condemnation proceedings to secure the needed remainder. The action was contested on the ground that it was not for a public use of the property. The Court held that under the peculiar circumstances of the case the acquisition of the new town site was so necessary to the irrigation project that the public use, which was the reservoir, covered the taking of the town site. The Court noted that its conclusion was not in conflict with the case dealt with in the *Opinion of Justices* in 204 Mass. [13] In that case the justices held that the City of Boston, building an improved street, had no power to condemn lots abutting the proposed street with a view to selling them thereafter for the erection of warehouses, etc., usable in private business. The Court said that the distinction between that case and the one before it was that the removal of the town of American Falls was a necessary step in the public improvement itself. The Court said flatly that the tract selected *for* the new site was "the only practical and available place to which the part of the town to be flooded could be moved so as to be united with the one-quarter of the old town which would be left." [14]

In *United States ex rel. T. V. A.* v. *Welch* [15] the question was whether the power to condemn certain land had been conferred upon the Tennessee Valley Authority and, if so, whether the statute was constitutional. The reservoir created by the construction of a dam submerged a roadway which was the only means of ingress and egress for a moun-

[13] 204 Mass. 607, 91 N.E. 405 (1910).

[14] *Supra*, 263 U.S. at 81.

[15] 327 U.S. 546, 90 L.Ed. 843, 66 S.Ct. 715 (1946).

tainous area upon which some 216 families lived. After various negotiations between the State of North Carolina, the county, the T. V. A., and the National Park Service, it was determined that the most economical and most feasible solution to the difficulty was for the T. V. A. to acquire by purchase or condemnation all the land in the isolated area and to transfer it to the National Park Service for inclusion within the Great Smoky Mountain National Park. The District Court and the Court of Appeals held that the T. V. A. had no power under the statute to condemn this land. The Supreme Court reversed. The Court said that it viewed the entire transaction, that is, the construction of the dam, the reservoir, and the acquisition of the property, as a single integrated effort. It held that the responsibilities placed on the T. V. A. were not only the building of dams but related to navigability, flood control, reforestation, marginal lands, and the agricultural and industrial development of the whole Tennessee Valley. The Court discussed the scope of the judicial power to determine what is a public use for the purposes of the Fourteenth Amendment and quoted from *Old Dominion Co.* v. *United States*,[16] saying that whatever may be the scope of that power the decision of Congress "is entitled to deference until it is shown to involve an impossibility." The Court held that the T. V. A. took the tracts for a public purpose. The cited case, *Old Dominion Co.* v. *United States*, involved the condemnation of land upon which the United States had built warehouses for the Quartermaster of the Army at a cost of more than $1,500,000, which the Court said "clearly were for a public use." Congress had made a specific appropriation for this land, labeling it "Sites for military purposes" and "for the Quartermaster warehouses". A contention was made that the Secretary of War and his

[16] 269 U.S. 55, 66, 70 L.Ed. 162, 46 S.Ct. 39 (1925).

subordinates had in mind saving to the Government the cost of the buildings rather than a future use of the land by the Government. In that connection the Court said that the decision of Congress "is entitled to deference until it is shown to involve an impossibility."

We come, then, to the problem presented in the case at bar. It lies in three parts. 1. First, there is the slum. A slum is made up of houses (or substitutes for houses), the appurtenances thereto, and people. The houses and appurtenances are such that the people live in filth and breed disease and crime. A slum can be eliminated by tearing down the houses, destroying the appurtenances, and either building new housing on the spot for the people or moving the people away. 2. Second, there is the land upon which a slum exists. The land itself neither contributes to nor detracts from a slum. It is the same whether a slum or a model building exists upon it. The land cannot be destroyed or moved. Only its ownership and its use can be changed. If cleared, the land upon which a slum presently exists would have no harmful effects upon the public. Neither does naked ownership of land, apart from use, have any harmful public effects. A slum and the legal title to the naked land upon which it exists are separate things. 3. Third, there are sections of cities which are not at the present time used to their fullest economic possibility, or are not arranged to fit current ideas of city development. An outstanding example is Trinity Church and its surrounding cemetery at the corner of Wall Street and Broadway in New York City. Old streets are not so wide as new ones would be. Apartment houses would be more economically efficient than are single dwellings. Phrases used to describe this situation[17] are "inadequate planning of the

[17] Taken from the Pennsylvania statute. Urban Redevelopment Law of May 24, 1945, P. L. 991, 35 P. S. 1701 *et seq.*

area", "excessive land coverage by the buildings thereon", "defective design and arrangement of the buildings thereon", "faulty street or lot layout", "economically or socially undesirable land uses". The statutes dealing with these areas are usually called "urban redevelopment" laws. The areas are frequently called "blighted". They are in no sense slums, or similar to slums; they are out-of-date. They do not breed disease or crime; they fail to measure up to their maximum potential use in terms of economic, social, architectural, or civic desirability.

These three distinct factual situations present three distinct sets of legal questions.

I

First, we have the problem of the slum. There is no doubt concerning the power of Congress to delegate to the District Government the power to clear slums. The power lies within the well-established concepts of police power, which is the protection of the public health, safety, morals and welfare. And the Supreme Court pointed out in *District of Columbia* v. *Thompson Co.*[18] that the Congress can delegate the full of the police power to the District Government. Moreover, the clearance of a slum is a public purpose, and the condemnation of improvements upon land—buildings and appurtenances—which create the hazards to health, safety, etc., is within the power of eminent domain. Since the Government can condemn such property without compensation under the police power, *a fortiori* it can condemn and pay reasonable compensation. Since there is power to condemn without compensation there is power to condemn with compensation.

There have been in existence for years statutes which give the District Government condemnation power in respect to unsafe and insanitary buildings and in respect to alley dwellings.[19] If they are not sufficient to complete the ad-

[18] 346 U.S. 100, 97 L.Ed. —, 73 S.Ct. 1007 (1953).

[19] D. C. Code §§ 103-104, 501-504, 661-667 of Title 5 (1951).

visable eliminations, Congress has ample power to correct the deficiencies.

We hold, therefore, that, so far as the District Redevelopment Act authorizes the condemnation of improvements upon land which are the creating or perpetuating causes of conditions injurious to the public health, safety, morals and welfare, as that term is used to describe breeding grounds for crime and disease, it is valid.

The problem of the slum includes not only the elimination of presently existing slums but also the prevention of future slums. That objective involves questions different from and more difficult than the elimination of present conditions. Prevention deals with developments which may occur in the future, not merely with conditions which exist in the present. So the problem of prevention is: What should be done with property to prevent future developments which will eventuate in slums? Regulations affecting the use of property, designed to prevent the breeding and spread of disease and crime, are within the police power and, when reasonable, are clearly valid. And it seems to us that the prevention of such conditions is a public purpose which would sustain the validity of seizure by eminent domain where the seizure is necessary for the purpose. But that conclusion poses problems. Among these problems are: Is the seizure *necessary* to the prevention of slums? Does the proposed disposition of the property after seizure reasonably serve the purpose of prevention? Perhaps the problem is more vividly phrased this way: If no slum exists, either because none has ever existed at that place or because an existing slum has been cleared, may the Government seize property in order to prevent the future development of a slum? Practical questions are immediately obvious. Why is such a drastic step by the Government necessary or appropriate to prevent a future slum on a certain parcel of land? Will the proposed disposition of the property prevent slum conditions from occurring on it? The buildings, appurtenances, etc., which constitute the slum itself are usually simply destroyed. The puzzling questions relating to slum prevention, therefore, relate more directly to the title to the land than they do to the ownership of the im-

provements. We therefore discuss the matter in more detail in the next section of this opinion.

II

Second, we have the problem of the title to the land upon which a slum now exists. Can the Government seize title to land from which a slum has been or could be cleared, and sell it to a private person for private uses? If the land is to be devoted to schools, roads, parks and such, or to public housing, or to needed low-cost housing, it is to be devoted to a public use, and so its seizure under the power of eminent domain is clearly authorized. But, if the sale subsequent to the seizure is to a private person for a purely private use—such, for example, as apartment houses, stores or theaters—the validity of the seizure of the title is a different problem.

The traditional definition of the power of eminent domain is in terms of public use. It contemplates the use to which the property is to be put after it has been taken. Illustrations are those we have just mentioned, the taking of property for schools, streets, parks, etc. But the term "public use" has progressed as economic facts have progressed, and so projects such as railroads, public power plants, the operation of mines under some conditions, and, more recently, low-cost housing have been held to be public uses for which private property may be seized. Moreover, the traditional concept of use as the keystone of eminent domain has been enlarged in modern thought and cases. We find it described as public purpose. The variation in the term from "use" to "purpose" indicates a progression in thought. The idea is that the taking itself, as distinguished from the subsequent use of the property, may be required in the public interest. The Supreme Court has not gone far in that direction, but we think we see it indicated in the *Brown* and *T. V. A.* cases, which we have discussed. We so hold. We hold that the taking of title to real estate for the public purpose of eliminating or of preventing slums is within the power of eminent domain, even though the use to which the property is put after seizure is not a public use; provided (1) that the seizure of the title is necessary to the elimina-

tion of the slum or (2) that the proposed disposition of the title may reasonably be expected to prevent the otherwise probable development of a slum.

These extensions of the concept of eminent domain, to encompass public purpose apart from public use, are potentially dangerous to basic principles of our system of government. And it behooves the courts to be alert lest currently attractive projects impinge upon fundamental rights. The reasoning upon the point begins with the basic concept of natural rights and of property as one of those rights. To secure those rights governments were instituted, says the Declaration, and to secure them governments may impose limitations upon them; moreover, by clear implication the Fifth Amendment authorizes the taking of private property for public use. But here is the end of government power. That the Government may do whatever it deems to be for the good of the people is not a principle of our system of government. Nor can it be, because the ultimate basic essential in our system is that individuals have inherent rights, and as to them the powers of government are sharply limited. There is no general power in government, in the American concept, to seize private property. Hence it is universally held [20] that the taking of private property of one person for the private use of another violates the due process of law clauses of the Fifth and Fourteenth Amendments. The reasoning which applies to this right is the same as that which applies to other rights guaranteed by the Constitution. Congress can suppress free speech if a clear and present danger necessitates it, but the suppression can go only as far as the necessity. In these principles lies one of the critical differences between our system of government and the totalitarian systems.

The restriction of the power of seizure to the necessities of the public use or purpose is clearly taught by the Supreme Court in *Brown* v. *United States, supra*. As we have

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[20] A chain of study could begin with *Missouri Pacific Ry.* v. *Nebraska ex rel. Board of Transportation*, 164 U.S. 403, 417, 41 L. Ed. 489, 495, 17 S.Ct. 130 (1896). Many treatises have been written upon it. *See, e.g.*, COOLEY, CONSTITUTIONAL LIMITATIONS 1124 *et seq.* (8th ed. 1927); MOTT, DUE PROCESS OF LAW, pt. 9, c. 21 (1926); 1 NICHOLS, EMINENT DOMAIN § 4.7 *et seq.* (3d ed. 1950).

already pointed out, the Court explicitly noted that its decision was not in conflict with the Massachusetts case[21] in which the justices held that, while the power of eminent domain permitted the seizure of property necessary to widen a street, it did not permit the seizure of abutting property for the purpose of reselling it for private uses. Mr. Justice Brandeis said in *Thompson* v. *Consolidated Gas Co.*,[22] "And this Court has many times warned that one person's property may not be taken for the benefit of another private person without a justifying public purpose, even though compensation be paid."[23] We do not understand the *T. V. A.* case, *supra*, to repudiate this principle. Rather it affirmed it. The Court, after examining the facts and the statute, held the taking to be for a public purpose; it did not hold that T. V. A. might seize property beyond the public need. "When the need arises," said the Court, "individuals may be required to relinquish ownership of property • • •."[24]

The rule is laid down in *Pennsylvania Mut. Life Ins. Co.* v. *City of Philadelphia*,[25] decided by the Supreme Court of Pennsylvania and cited with approval by that court in *Belovsky* v. *Redevelopment Authority*.[26] It held invalid an act authorizing the seizure and resale of property abutting a public park merely for the purpose of protecting the parkways and "the preservation of the view, appearance, light, air, health, or usefulness thereof."

In the *Muller* case[27] the Court of Appeals of New York said:

> "Whenever there arises in the state, a condition of affairs holding a substantial menace to the public health, safety, or general welfare, it becomes the duty

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[21] Opinion of Justices, *supra* note 13.

[22] 300 U.S. 55, 80, 81 L.Ed. 510, 57 S.Ct. 364 (1937).

[23] And see *Kohl* v. *United States*, 91 U.S. 367, 23 L.Ed. 449 (1876); *Cincinnati* v. *Vester*, 281 U.S. 439, 74 L.Ed. 950, 50 S.Ct. 360 (1930); *Salisbury Land & Improvement Co.* v. *Commonwealth*, 215 Mass. 371, 102 N.E. 619 (1913).

[24] *Supra*, 327 U.S. at 554-555.

[25] 242 Pa. 47, 88 Atl. 904 (1913).

[26] 357 Pa. 329, 54 A.2d 277 (1947).

[27] *New York City Housing Authority* v. *Muller*, 270 N.Y. 333, 1 N.E.2d 153, 155 (1936).

of the government to apply whatever power is necessary and appropriate to check it. There are differences in the nature and characteristics of the powers, though distinction between them is often fine. * * * But if the menace is serious enough to the public to warrant public action and the power applied is reasonably and fairly calculated to check it, and bears a reasonable relation to the evil, it seems to be constitutionally immaterial whether one or another of the sovereign powers is applied."

We are of opinion that title to real estate cannot be seized by the Government merely because a slum presently exists upon the land. Some further necessitous circumstance must exist to validate such a seizure. It must be either that the clearance of the slum is impracticable without taking the title to the land or that proposed restrictions which can be imposed only through the medium of a resale are fairly calculated to prevent recurrence of slum conditions. Ordinarily the seizure of the fee title to land would seem to be neither necessary nor reasonably incidental to the clearance of a slum. But we readily see that there could be circumstances—such, for example, as an obdurate landlord or an impoverished homeowner—in which the seizure of the title, with compensation therefor, ought in reason accompany the condemnation of the buildings. Valid seizure for prevention purposes frequently occurs when the changing of a neighborhood from residential to manufacturing, maritime, or major commercial leaves a remnant of housing accommodations which nurture slum conditions and which ought to be removed to permit other uses.[28]

Whether the taking of a certain piece of property is necessary for a certain public use or purpose is initially and almost wholly a legislative question. But like every other legislative determination it is subject to the Constitution. Congress itself could not deprive a person of his property without due process of law. It is the duty of the courts, when a legislative act is challenged as violative of the Constitution, to determine that issue. Indeed it is for that

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[28] See, *e.g.*, *Burt* v. *Pittsburgh*, *Schenck* v. *City of Pittsburgh*, and *Foeller* v. *Housing Authority of Portland*, *infra*.

specific purpose that this three-judge court is assembled by direct and specific authorization of Congress. Judicial consideration of the validity of a legislative decision that a particular property be seized for a public purpose is not farther removed from judicial inquiry than is the validity of a statute. As Mr. Justice Burton pointed out in *United States* v. *Carmack*,[29] the Fifth Amendment provides an owner "with important protection against abuse of the power of eminent domain".

Just as the seizure of property by the Government is a legislative rather than a judicial question, it is also a legislative rather than an executive question. The Supreme Court made amply clear in *Youngstown Co.* v. *Sawyer*[30] that, unless there is an act of Congress which expressly authorizes seizure or from which authority to seize can fairly be implied, there is no executive power of seizure. That rule must guide us here.

In the case before us Congress made no declaration concerning the specific property involved. Its declaration concerned "conditions existing in the District of Columbia with respect to substandard housing and blighted areas". Obviously that declaration did not concern all conditions everywhere in the District. It meant certain conditions in certain places. Congress declared as a matter of legislative determination that the conditions to which it referred "are injurious to the public health, safety, morals, and welfare". Here, then, in that quoted expression is the description of the conditions to which the statute is directed. Then Congress declared that to effectuate its policy of "eliminating all such injurious conditions" and "to eliminate the substandard housing conditions and the communities in the inhabited alleys and blighted areas" acquisition of property by eminent domain is necessary. When it conferred the power of eminent domain upon the Agency it did so subject to the "conditions" of the Act and "for that purpose", *i.e.*, for the redevelopment of "blighted territory" and the prevention and elimination of "blighting factors or causes of blight".

With those limitations Congress delegated to executive

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[29] 329 U.S. 230, 236-237, 91 L.Ed. 209, 67 S. Ct. 252 (1946).
[30] 343 U.S. 579, 96 L.Ed. 1153, 72 S. Ct. 863 (1952).

officials the authority to determine what properties should be seized. Of course it could do so, provided the required tests, established long ago, are met. The tests are: The purpose for which the property is to be seized must be a public purpose; the seizure must be for the declared purpose; and the act of delegation must be sufficiently explicit to enable the administrators to act with administrative power and not impinge upon legislative power, and also to enable a court to determine whether the administrators are within the congressional grant.

With these principles in mind we hold that the seizure of title to real estate upon which slums exist or upon which a slum may be foreseen would be valid under the Constitution only to the extent that the taking is reasonably necessary to the accomplishment of the asserted public purpose. We hold that the Redevelopment Act goes no further than that, that it confers upon the administrative officials power to seize property, under the limitations we have described, only for the purpose of eliminating or preventing conditions injurious to the public health, safety, morals or welfare. Thus construed, we hold the statute to be valid. We hold that the necessity for the seizure of the title to a parcel of real estate involves facts and judgment, that these are essentially for the administrators, and that the function of the courts is limited to determining whether the conclusions of the administrators are within reason upon the record and within the congressional delegation of authority.

III

Third, we have the problem of the area which is not a slum but which is out-of-date, called by the Government "blighted" or "deteriorated". The Government says the statute is not limited to slum clearance but extends to what is called "urban redevelopment"; and that as thus construed the statute is valid. The word in the statute upon which the Government rests its view is "blighted", which is not defined in the statute. A hint of a meaning such as that urged by the Government is found in the phrase "backward and stagnant and therefore blighted", which appears near the end of Section 3(n) of the Act. But

we have already indicated our conclusion that the more direct provisions of the statute control its scope, that it is the clearly expressed intent of the Congress to authorize in this statute the seizure of property only for the purpose of eliminating and preventing thereafter conditions injurious to the public health, safety, morals and welfare. If we did not find this meaning clear upon the face of the statute, we would be impelled to construe it with that meaning, because otherwise the statute would be unconstitutional.

The contention as to "blight" and "urban redevelopment" would cover two possible factual situations: one where the plan is to redevelop an area in which no slums exist, and the other where the plan is to redevelop an area which the Government deems "appropriate" for redevelopment but upon only a part of which slums exist. We first discuss the two possibilities separately.

The hypothesis in the first phase of this consideration is an urban area which does not breed disease or crime, is not a slum. Its fault is that it fails to meet what are called modern standards. Let us suppose that it is backward, stagnant, not properly laid out, economically Eighteenth Century—anything except detrimental to health, safety or morals. Suppose its owners and occupants like it that way. Suppose they are old-fashioned, prefer single-family dwellings, like small flower gardens, believe that a plot of ground is the place to rear children, prefer fresh to conditioned air, sun to fluorescent light. In many circles all such views are considered "backward and stagnant". Are those who hold them "therefore blighted"? Can they not, nevertheless, own property? Choice of antiques is a right of property. Or suppose these people own these homes, and can afford none more modern. The poor are entitled to own what they can afford. The slow, the old, the small in ambition, the devotee of the outmoded have no less right to property than have the quick, the young, the aggressive, and the modernistic or futuristic.

Is a modern apartment house a better breeder of men than is the detached or row house? Is the local corner grocer a less desirable community asset than the absentee stockholder in the national chain or the wage-paid manager?

Are such questions as these to be decided by the Government? And, if the decisions be adverse to the erstwhile owners and occupants, is their entire right to own the property thereby destroyed? Even if the line between regulation and seizure, between the power to regulate and the power to seize, is not always etched deeply, it is there. And, even if we progress in our concepts of the "general welfare", we are not at liberty to obliterate the boundary of governmental power fixed by the Constitution.

The terms "public use" and "public purpose" have never been defined with precision, and cannot be. Localities, customs and times change, and with them the needs of the public may change. But even the most liberal courts have put boundaries upon the meanings. One eminent authority[31] sums up the matter by saying that the courts which go furthest in sustaining the power of eminent domains hold that "anything which tends to enlarge the resources, increase the industrial energies, and promote the productive power of any considerable number of the inhabitants of a section of the state, or which leads to the growth of towns and the creation of new resources for the employment of capital and labor" constitutes a public use. We think so unqualified a definition cannot be sustained, because every factory or mercantile house of any size meets that definition to some degree, and most certainly the Government has not an unrestricted power to seize one man's property and sell it to another for the building of a factory or a store. The decisions of the courts which used such sweeping language and which are cited to us fall far short of supporting the contention made to us in the present case. We shall discuss them in a moment.

It is said that the established meaning of eminent domain includes measures for the "general welfare" and that new social doctrines have so enlarged the concept of public welfare as to include all measures designed for the public benefit. The difficulty lies somewhat in the unqualified philosophical declaration, but it lies more in the practicality that some person or persons must determine, if that be the

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[31] 2 NICHOLS, EMINENT DOMAIN § 7.2 *et seq.* (3d ed. 1950).

rule, what is the public benefit. Therein lies the insuperable obstacle, in the American view. There is no more subtle means of transforming the basic concepts of our government, of shifting from the preeminence of individual rights to the preeminence of governemnt wishes, than is afforded by redefinition of "general welfare", as that term is used to define the Government's power of seizure. If it were to be determined that it includes whatever a commission, authorized by the Congress and appointed by the President, determines to be in the interest of "sound development", without definition of "sound development", the ascendency of government over the individual right to property will be complete. Such ascendancy would logically follow over the rights of free speech and press, it seems to us.

We are of opinion that the Congress, in legislating for the District of Columbia, has no power to authorize the seizure by eminent domain of property for the sole purpose of redeveloping the area according to its, or its agents', judgment of what a well-developed, well-balanced neighborhood would be; lest this sentence be misconstrued out of context, we repeat our hypothetical assumption for the purposes of this first phase of Section III of our opinion that no slum exists on the hypothetical property or in the area and that the seizure is not for a public use.

But the Government rests the present case upon a narrower basis. And this brings us to the second phase of the problem posed in this section of the opinion. This concerns a situation where the plan is to redevelop an area upon only a part of which slums exist. The state cases hold, the Government says, that "where from a comprehensive standpoint there is a *public benefit*, such as slum clearance, flowing from the project, the taking is for a public use regardless of the ultimate disposition of the particular piece of property." The Government says that it has determined that Project Area B in the case at bar is an appropriate area for "redevelopment", that slums exist in that area, and that therefore it may seize the title to all the land in the area and, having replanned it, sell it to private persons for the building of row houses, apartment houses, commercial establishments, etc. In essence the claim is that if slums

exist the Government may seize, redevelop and sell all the property in any area it may select as appropriate, so long as the area includes the slum area. This amounts to a claim on the part of the authorities for unreviewable power to seize and sell whole sections of the city.

We think, as we have indicated, that the Redevelopment Act does not contain so broad an authorization. But, if it did so, it would be invalid from two viewpoints. In the first place, a public purpose must be the reason for the seizure of private property, not merely the excuse for the seizure. There must be a necessity for the taking in order to accomplish the public purpose. The rule governing the seizure of property geographically unnecessary to slum clearance is the same as that governing the unnecessary seizure of title to land upon which a slum exists, which rule we have already discussed. In the second place, the Redevelopment Act does not contain standards sufficiently definite to sustain the validity of an authorization as broad as that claimed. "Blight" is not defined in the statute. No standard other than "substandard housing" is defined. We are not told where we may ascertain what a proper land coverage would be, or a building arrangement without defect, or a street layout without fault, or what is desirable economic use or even socially desirable use of land, or what is "backward" or "stagnant", or what is "sound development". These criteria for seizure would be formulated on a case-by-case basis.

The inadequacy of the statutory prescriptions is demonstrated by the proposed boundary lines of Project Area B. We have in the statute no measuring means by which to tell why one property on Fourth Street is to be seized, or can be seized validly, while another property on the same side of the same block, or across the street, or in the next block is not included in the area to be condemned. Congress cannot confer undescribed authority to regulate a business; *a fortiori* it cannot confer undefined power to seize in full ownership businesses and properties.

The Government cites the recent redevelopment cases in the state and federal courts. The state cases are far too numerous to discuss in detail, but study shows that they

deal with low cost housing projects, with solutions for acute conditions affecting some major feature of the life of the city, or with slum clearance alone. The *Foeller* case[32] is an example of an exhaustive study, with many citations of authority. It involved an area in the waterfront district of Portland, Oregon, where dwellings remained scattered among the commercial and industrial establishments as these establishments increased in number and the residential areas retreated from them. This inevitably created slums. Moreover, if the old houses were removed and new ones built in the same locations, slum conditions would almost certainly return. Housing accommodations in the midst of the smoke, fumes, noise, and fire hazards of maritime and industrial activity naturally and usually retrogress to slums. At the same time, commercial, industrial and maritime activity is the lifeblood of Portland. The redevelopment plan was to take over the titles to these dwellings and the small neighborhood business properties and to resell them with provisions, inserted in the title instruments to run with the land, that the property be used thereafter for commercial and industrial purposes only. Here was a vigorous, somewhat drastic attack upon an acute public problem. The seizure and resale of the properties, grouped to permit use for other than dwellings, was a clear method of serving two purposes, (1) to prevent the recreation of slums and (2) to enlarge the potential activity upon which the city lived. The Supreme Court of Oregon, in an exhaustive opinion, stressing and emphasizing the features of the factual situation, upheld the statute.

The same sort of condition existed in the *Shenck* case.[33] The project area was the heart of the downtown commercial area of Pittsburgh. The growth of the city from a small town on the triangle between the two rivers left village streets to serve the needs of a great commercial metropolis, and dwellings remained in the district. Inevitably slums arose in those dwelling conditions. The proposed redevelopment plan was to take those properties, build a great park, replat the streets, and erect three 18-story office build-

[32] *Foeller* v. *Housing Authority of Portland*, 256 P.2d 752 (Ore. 1953).
[33] *Schenck* v. *City of Pittsburgh*, 364 Pa. 31, 70 A.2d 612 (1950).

ings. Here again were two purposes, the conclusive prevention of a return of slums to this area and the enlargement of the activity upon which the economic life of the public depended. The Supreme Court of Pennsylvania upheld the plan, and the federal courts did likewise.

In *Zurn v. City of Chicago*[34] a different problem was presented. The statute there involved, the Supreme Court of Illinois said, "is purely an act for slum clearance and rehabilitation of slum and blight areas", and again it said, "The sole basis for the public use is slum clearance and the rehabilitation of slum and blight areas." The court noted that "Slum and blight areas are defined in section 3 as those urban districts in which a major portion of the housing is detrimental to the health, safety, morality or welfare of the occupants by reason of age, dilapidation, overcrowding, faulty arrangement, lack of ventilation, light or sanitation facilities, or any combination of these factors."[35] Within this purpose of slum clearance the court upheld the power of eminent domain.

It is said that the Supreme Court in *Burt* v. *Pittsburgh*[36] sustained the view which the Government takes upon this phase of the matter before us. But we do not find that conclusion in that case. That controversy concerned the same problem, the same area in downtown Pittsburgh, that was considered in *Schenck, supra*. It was presented to a three-judge federal court, and that court, in a two-paragraph opinion,[37] recited (1) that the validity of the statute[38] under the constitution of the State of Pennsylvania had been upheld by the Supreme Court of Pennsylvania in two cases, citing Schenck and the *Belovsky* case,[39] and (2) that there was nothing in the complaint or in the exhibits attached thereto which indicated that the statutes themselves or the action of the constituted authorities in carrying them out violated the plaintiff's rights under the fed-

[34] 383 Ill. 114, 50 N.E.2d 18 (1945).
[35] *Id.*, 50 N.E.2d at 23.
[36] 340 U.S. 802 (1950).
[37] *Burt* v. *Pittsburgh*, Civil No. 8706, W.D.Pa., April 25, 1950.
[38] *Urban Redevelopment Law*, *supra* note 17.
[39] *Belovsky* v. *Redevelopment Authority*, 357 Pa. 329, 54 A.2d 277 (1947).

eral Constitution. Thereupon the court dismissed the complaint. The Supreme Court affirmed upon motion, without opinion, citing *United States* ex rel *T. V. A.* v. *Welch*, *supra*. In the latter case the Court had pointed out that it had never held invalid a state statute authorizing the taking of private property for public uses which the supreme court of the state had upheld. It must be this section of the *T. V. A.* opinion which the Court had in mind in citing the *Burt* case, since the remainder of that opinion dealt with the constitutional powers of a federal agency under a federal statute.

In the *Belovsky* case, cited by the three-judge court in *Burt*, the Supreme Court of Pennsylvania held that the fundamental purpose of the Housing Authorities Act, which it had upheld as a slum clearance act,[40] and the Urban Redevelopment Law "was the same, namely, the clearance of slum areas",[41] and that in the Urban Redevelopment Law there was "only the one major purpose of the elimination and rehabilitation of the blighted sections".[42] The court pointed out that "the law actually requires that property be taken by eminent domain only to the extent reasonably required for the purpose for which the power is exercised".[43]

Thus the utmost held by the recent redevelopment cases is that meeting a compelling community economic need is a public purpose. That is the doctrine of the early Supreme Court cases, such as *Fallbrook*, *Clark* v. *Nash*, and others, *supra*. We do not depart from the thesis of those decisions.

In *People of Puerto Rico* v. *Eastern Sugar Associates*[44] the Court of Appeals for the First Circuit considered a statute of the insular legislature which embodied a far-reaching program of agrarian reform designed to remedy desperate economic conditions existing in the Islands. The

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[40] *Hornan* v. *Philadelphia Housing Authority*, 331 Pa. 209, 200 Atl. 834 (1938).

[41] *Supra*, 54 A.2d at 281.

[42] *Id.* at 282.

[43] *Id.* at 283.

[44] 156 F.2d 316 (1946), *cert. denied*, 329 U.S. 772, 91 L.Ed. 664, 67 S.Ct. 190 (1946).

act authorized the seizure of large holdings of land used for the raising of sugar, especially that owned by corporations, and the redistribution of the land to individuals in small parcels. The court based the validity of the statute upon the public necessity for solution of the general and acute conditions and upon its conclusion that the statute was "reasonably calculated to deal with these problems." The essence of the opinion conforms to the other decisions we have discussed.

The Government cites cases dealing with such problems as the selection of post-office sites,[45] and the authority of administrative officials to make such selections. They are not pertinent here. The United States has undoubted power to establish post offices, and the use is a public use. The site merely involves a comparative judgment. The question before us concerns power.

Legal support for the Government's position is sought in the authorities upholding the validity of zoning. But we know of no zoning law which provides that, if one's property, now to be in a residential zone, has been used in the past for commercial purposes, its ownership is forfeit. Moreover the power to zone is sharply restricted. The Supreme Court said in *Nectow* v. *Cambridge*,[46] cited in *Devereux Foundation* v. *Lea*:[47]

> "The governmental power to interfere by zoning regulations with the general rights of the land owner by restricting the character of his use, is not unlimited, and other questions aside, such restriction cannot be imposed if it does not bear a substantial relation to the public health, safety, morals, or general welfare. *Euclid* v. *Ambler Co., supra* [272 U. S.] p. 395."

And in *Seattle Trust Co.* v. *Roberge*[48] the Court said: "Zoning measures must find their justification in the police power exerted in the interest of the public."

This brings us to consider the redevelopment plan before us. It covers about fifteen square city blocks. It lies

[45] *E.g., United States* v. *Carmack, supra.*
[46] 277 U.S. 182, 188, 72 L.Ed. 842, 48 S.Ct. 447 (1928).
[47] 326 U.S. 686, 90 L.Ed. 403, 66 S. Ct. 89 (1945).
[48] 278 U.S. 116, 120-121, 73 L.Ed. 210, 49 S.Ct. 50 (1928).

within a Census Tract in which slum conditions are said to exist, and it contains properties upon which slum conditions are said to exist. Its western boundary is an irregular line which runs around lots, encompasses some establishments along a street and excludes others on the same side of the same street, moves from east to west as it runs north. It excludes certain properties, and under it certain other properties would be sold back to the present owners or be retained by them. The key to the plan, apart from slum clearance, is the opinion of the Government authorities that residential neighborhoods should be "well-balanced" and that the area should contain housing for all income groups. The plan points out that "redevelopment" will inevitably raise the average income level and make it possible to introduce housing for higher-income families at a later stage in the program. It says that generally the Southwest area "should be predominantly a moderate to lower-income area". The recommendations as to the percentages of the types of accommodations to be built in the area are said to be "based upon a conservative analysis of the present local real estate market." The plan says: "The purpose of redevelopment is to clear the slums and replace them with that pattern of land use most appropriate to the overall development of the community."

No acute housing shortage is to be met. In fact the plan provides for no more residents than presently occupy the area. No pressing economic condition, apart from the slums, is sought to be dealt with by this plan. No purpose of housing for the needy—low-rent housing—is the motivation. No rearrangement of streets is contemplated or provided. The streets throughout Project Area B are exactly the same as are the streets in all parts of the District of Columbia, lettered streets running east and west and numbered streets running north and south, in continuous lines across the entire District. The plan provides that certain streets shall be widened somewhat and that an expressway and a greenway shall be built. The only restrictions as to future use are the requirements as to the type of houses to be built (row, apartment, etc.) and as to the percentage of rentals for the low-income group.

In sum the purpose of the plan, in addition to the elimina-

tion of slum conditions, is to create a pleasant neighborhood, in which people in well-balanced proportions as to income may live. The Government is to determine what conditions are pleasant, what constitutes the "most appropriate" pattern of land use, what is a good balance of income groups for a neighborhood, how many poor people, how many moderately well-to-do people, how many families of two, how many of four, etc., should be provided for in this neighborhood, and what the proper development of a community should be.

Of course the plan as pictured in the prospectus is attractive. In all probability it would enhance the beauty and the livability of the area. If undertaken by private persons the project would be most laudable. It would be difficult to think of a village, town or city in the United States which a group of artists, architects and builders could not improve vastly if they could tear down the whole community and rebuild the whole of it. But as yet the courts have not come to call such pleasant accomplishments a public purpose which validates Government seizure of private property. The claim of Government power for such purposes runs squarely into the right of the individual to own property and to use it as he pleases. Absent impingement upon rights of others, and absent public use or compelling public necessity for the property, the individual's right is superior to all rights of the Government and is impregnable to the efforts of government to seize it. That the individual is in a low-income group or in a high-income group or falls in the middle of the groups is wholly immaterial. One man's land cannot be seized by the Government and sold to another man merely in order that the purchaser may build upon it a better house or a house which better meets the Government's idea of what is appropriate or well-designed.

We hold that Congress did not in the Redevelopment Act confer power to seize property beyond the reasonable necessities of slum clearance and prevention, the word "slum" meaning conditions injurious to the public health, safety, morals and welfare.

If property is seized for the purpose of eliminating or preventing slums within the limitations and in accordance with the rules we have described, the fact that it may be sold

subsequently to private persons does not vitiate the validity of the seizure.

The complaints in the two actions at bar are pitched entirely upon a challenge of the constitutionality of the Redevelopment Act, and, except the issue as to commercial property, no other issue as to the application of the statute to the property of plaintiffs is raised by the pleadings. Therefore, since the statute, as we construe it, is constitutional, we must grant the motion to dismiss.

In the argument by plaintiffs' counsel in support of their motions for summary judgment, reference was made to arbitrary and capricious action by the Planning Commission in fixing the boundary lines of the Southwest Redevelopment Project Area "B" to include the plaintiffs' commercial properties, while excluding other commercial properties on the same street. This issue, however, is not raised by the pleadings. Should the pleadings be amended to include an issue as to whether or not the administrative agency has acted beyond the scope of the statute, as construed in this opinion, in including the plaintiffs' properties within the project area, the case should be heard by one judge for determination of that question.

E. Barrett Prettyman.
Richmond B. Keech.
Edward M. Curran.

Dated November 5, 1953.

Appendix

60 Stat. 790 (1946), D. C. Code § 5-701 (1951):

"It is hereby declared to be a matter of legislative determination that owing to technological and sociological changes, obsolete lay-out, and other factors, conditions existing in the District of Columbia with respect to substandard housing and blighted areas, including the use of buildings in alleys as dwellings for human habitation, are injurious to the public health, safety, morals, and welfare, and it is hereby declared to be the policy of the United States to protect and promote the welfare of the inhabitants of the seat of the Government by eliminating all such injurious conditions by employ-

ing all means necessary and appropriate for the purpose; and control by regulatory processes having proved inadequate and insufficient to remedy the evils, it is in the judgment of Congress necessary to acquire property in the District of Columbia by gift, purchase, or the use of eminent domain to effectuate the declared policy by the discontinuance of the use for human habitation in the District of Columbia of substandard dwellings and of buildings in alleys and blighted areas, and thereby to eliminate the substandard housing conditions and the communities in the inhabited alleys and blighted areas in such District; and it is necessary to modernize the planning and development of such portions of such District. The Congress finds that the foregoing cannot be accomplished by the ordinary operations of private enterprise alone without public participation in the planning and in the financing of land assembly for such development; and that for the economic soundness of this redevelopment and the accomplishment of the necessary social and economic benefits, and by reason of the close relationships between the development and uses of any part of an urban area with the development and uses of all other parts the sound replanning and redevelopment of an obsolescent or obsolescing portion of such District cannot be accomplished unless it be done in the light of comprehensive and coordinated planning of the whole of the territory of the District of Columbia and its environs; and that this comprehensive planning and replanning should proceed vigorously without delay; and to these ends it is necessary to enact the provisions hereinafter set forth; and that the acquisition and the assembly of real property and the leasing or sale thereof for redevelopment pursuant to a project area redevelopment plan, all as provided in sections 5-701 to 5-719, is hereby declared to be a public use."

60 Stat. 791 (1946), D. C. Code § 5-702 (1951):

"The following terms, whenever used or referred to in sections 5-701 to 5-719, shall, for the purposes of sec-

tions 5-701 to 5-719 and unless a different intent clearly appears from the context, be construed as follows:

* * *

"(f) 'Low-rent housing' means safe and sanitary housing within the financial reach of families of comparatively low income and, as a guide for the standard of rental to be used as a maximum at the time of the enactment of this law but not necessarily thereafter, it is specified that such housing shall be rented at not more than $13 per room per month, excluding utilities.

* * *

"(h) 'Planning Commission' means the National Capital Park and Planning Commission.

* * *

"(j) 'Project area' is an area of such extent and location as may be adopted by the Planning Commission and approved by the District Commissioners after public hearing as an appropriate unit of redevelopment planning for a redevelopment project separate from the redevelopment projects for other parts of the District of Columbia. In the provisions of this Act relating to lease or sale by the Agency, for abbreviation 'project area' is used for the remainder of the project area after taking out those pieces of property which in accordance with section 7-706(a) shall have been or are to be transferred for public uses.

* * *

"(n) 'Redevelopment' means replanning, clearance, redesign, and rebuilding of project areas, including open-space types of uses, such as streets, recreation and other public grounds, and spaces around buildings, as well as buildings, structures, and improvements, but not excluding the continuance of some of the existing buildings or uses in a project area. For the purposes of sections 5-701 to 5-719, 'redevelopment' also includes the replanning, redesign, and original development of undeveloped areas which, by reason of street lay-out, lot lay-out, or other causes, are backward and stagnant and therefore blighted and for which replanning and

land assembly are deemed necessary as a condition of sound development.

"* * *

"(r) 'Substandard housing conditions' means the conditions obtaining in connection with the existence of any dwelling, or dwellings or housing accommodations for human beings, which because of lack of sanitary facilities, ventilation, or light, or because of dilapidation, overcrowding, faulty interior arrangement, or any combination of these factors, is in the opinion of the Commissioners detrimental to the safety, health, morals, or welfare of the inhabitants of the District of Columbia."

60 STAT. 793 (1946), D. C. CODE § 5-703 (1951):

"(a) The District of Columbia Redevelopment Land Agency is hereby established and shall be composed of five members. * * *"

60 STAT. 793 (1946), D. C. CODE § 5-704 (1951):

"(a) Subject to and in accordance with the procedures, conditions, and other provisions of sections 5-701 to 5-719, the Agency is hereby granted the power to further the redevelopment of blighted territory in the District of Columbia and the prevention, reduction, or elimination of blighting factors or causes of blight and for that purpose to acquire and assemble real property by purchase, exchange, gift, dedication, or eminent domain, and including the power to rent, maintain, manage, operate, repair, clear, transfer, lease, and sell such real property, but excluding the power to build new structures thereon (other than the improvements mentioned in section 5-706(i) or the power to enlarge, extend, or make major structural improvements of existing buildings).

"(b) Condemnation proceedings for the acquisition of real property for said purposes shall be conducted in accordance with the procedural provisions of sections 16-619 to 16-644. The title to properties acquired under sections 5-701 to 5-719 shall be taken by and in the name

of the Agency and proceedings for condemnation or other acquisition of property shall be brought by and in the name of the Agency."

60 STAT. 794 (1946), D. C. CODE § 5-705 (1951).

"(a) The Planning Commission is hereby directed to make and, from time to time, develop a comprehensive or general plan of the District of Columbia, including the appropriate maps, charts, tables, and descriptive, interpretative, and analytical matter, which plan is intended to serve as a general framework or guide of development within which the various project areas may be more precisely planned and calculated, and which comprehensive or general plan shall include at least a land-use plan which designates the proposed general distribution and general locations and extents of the uses of the land for housing, business, industry, recreation, education, public buildings, public reservations, and other general categories of public and private uses of the land.

"(b) For the exercise of the powers granted to the Agency by sections 5-701 to 5-719 for the acquisition and disposition of real property for the redevelopment of a project area, the following steps and plans shall be requisite, namely:

"(1) Adoption by the Planning Commission of the boundaries of the project area proposed by it, submission of such boundaries to the District Commissioners, and approval thereof by said Commissioners.

"(2) Adoption by the Planning Commission and submission to, and, after a public hearing thereon, approval by the District Commissioners, of the redevelopment plan of the project area which shall contain a site and use plan for the redevelopment of the area, including the approximate locations and extents of the land uses proposed for and within the area, such as public buildings, streets, and other public works and utilities, housing, recreation, business, industry, schools, public and private open spaces, and

other categories of public and private uses. Such plan shall also contain specifications of standards of population density and building intensity. Any such plan may also specify, by means of specification of maximum rentals or other basis, the amount or character or class of any low-rent housing for which the area or part thereof is proposed to be redeveloped.

"* * *

"(d) After a project area redevelopment plan shall have been adopted by the Planning Commission and approved by the District Commissioners, the Planning Commission shall forthwith certify said plan to the Agency, whereupon said Agency shall proceed to the exercise of the powers granted to it in sections 5-701 to 4-719 for the acquisition and assembly of the real property of the area. * * *"

60 STAT. 795 (1946), D. C. CODE § 5-706 (1951):

"(a) After the real property in the project area shall have been assembled by the Agency, the Agency shall have the power to transfer to and shall at a practicable time or times transfer by deeds to the United States or to the District of Columbia, or to the appropriate Federal or District public body, department, or agency, those pieces of real property which, in accordance with the approved project area redevelopment plan, are to be devoted to public uses (other than public housing) falling within the construction or administrative jurisdiction of Federal or District agencies, such as streets and other utilities and works, Federal and District public buildings, public recreational spaces, and schools. * * *

"(b) The Agency shall have the power to lease or sell the remainder of the project area as an entirety to a redevelopment company or to an individual or a partnership. * * *

"(c) Any such lease or sale may be made without public bidding but only after a public hearing, after ten days' public notice, by the Agency upon the proposed lease or sale and the provisions thereof.

"(d) The term of any such lease shall be fixed by the Agency and the instrument of lease may provide for renewals upon reappraisals and with rentals and other provisions adjusted to such reappraisals. Every such lease or sale shall provide that the lessee or purchaser shall carry out or cause to be carried out the approved project area redevelopment plan or approved modifications thereof and that no use shall be made of any land or real property included in the lease or sale nor any building or structure erected thereon which does not conform to such approved plan or approved modifications thereof. * * *

"(e) Until the Agency certifies that all building constructions and other physical improvements specified to be done and made by the purchaser of the area have been completed, the purchaser shall have no power to convey the area, or any part thereof, without the consent of the Agency; * * *.

"(f) In lieu of the lease or sale of a project area as an entirety, the Agency shall have the power to lease or sell parts of such area separately to individuals, partnerships, or redevelopment companies. * * *

"* * *

"(h) The Agency may itself demolish any existing structure or clear the area or any part thereof, or may specify the demolition and clearance to be performed by a lessee or purchaser within a reasonable time after such lease or purchase. The Agency may specify a reasonable time schedule and reasonable conditions for the construction of buildings and other improvements by a lessee or purchaser: * * *."

60 Stat. 797 (1946), D. C. Code § 5-707 (1951):

"(a) Prior to approval by the District Commissioners, pursuant to subparagraph (2) of section 5-705(b), of any redevelopment plan, the District Commissioners shall satisfy themselves (and shall so state at the public hearing required by such subparagraph) that decent, safe, and sanitary housing, substantially equal in quantity to the number of substandard dwelling

units to be removed or demolished within the project area, under the proposed redevelopment plan, are available or will be provided (by construction pursuant to the redevelopment plan, or otherwise) in localities, and at rents or prices, within the reach of the low-income families displaced or to be displaced (temporarily or permanently), pursuant to the redevelopment plan, from the project area."

63 STAT. 441 (1949), D. C. CODE § 5-717a (1951):

"• • •

"(g) It is the purpose and intent of this section to authorize the District Commissioners and the appropriate agencies operating within the District of Columbia to do any and all things necessary to secure financial aid under title I of the Housing Act of 1949. The District of Columbia Redevelopment Land Agency is hereby declared to be a local public agency for all of the purposes of title I of the Housing Act of 1949. • • •"

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1954

No. 22

SAMUEL BERMAN AND SOLOMON H. FELDMAN, EXECUTORS OF THE ESTATE OF MAX R. MORRIS, DECEASED, *Appellants*

v.

ANDREW PARKER, JOHN A. REMON, JAMES E. COLLIFLOWER, ET AL., *Appellees*

Appeal from the United States District Court for the District of Columbia

BRIEF FOR APPELLANTS

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INDEX

	Page
Opinion below	1
Jurisdiction	1
Statutes involved	2
Questions presented for review	2
Statement of case	3
Summary of argument	4
Argument	
I. An Act Authorizing the Seizure of Private Property by Eminent Domain of Realty for the Sole Purpose of Redeveloping an Area Is Unconstitutional	5
II. A Statute Authorizing the Seizure of Private Property for Private Use Violates the Due Process Clause of the Fifth Amendment	7
III. The Redevelopment Act Does Not Authorize the Seizure of Commercial Property	11
IV. The District of Columbia Redevelopment Act of 1945 Does Not Contain Standards Sufficient to Sustain Its Validity	13
Conclusion	16
Appendix	
District of Columbia Redevelopment Act of 1945	1-14

Table of Cases

Adams v. Housing Authority of City of Daytona Beach, etc., 60 S. 2d 663	5, 6, 9
Cincinnati v. Vester, 32 F. 2d 242, Aff. 281 U. S. 439, 50 Sup. Ct. 360	10, 12
Cole v. La Grange, 28 L. Ed. 896	7
Cooley, Constitutional Limitations 1124, et seq., 8th Ed. 1923	7
Dayton Mining Co. v. Seawell, 11 Nev. 394	11
Fay v. MacFarland, 32 App. D. C. 295	12
Field v. Clark, 143 U. S. 649	13

	Page
Gaylor v. Sanitary Dist., 204 Ill. 576, 68 N. E. 522	10
General Petrol Corp. v. Hobson, 23 F. 2d 349	7
Heitmuller v. Stokes, 49 App. D. C. 391	7
Hewitt v. State Medical Examiner, 148 Cal. 590, 84 P. 39	15
Hirsh v. Block, 50 App. D. C. 56	7
Housing Auth. of City of Atlanta, et al. v. Johnson, et al., 74 S. E. 2d 891	5
In Re Tai Kee, 12 Hall. 164	15
Joran v. Woodward, 40 Me. 317	11
Lichter v. U. S., 160 Fed. 2d 329	14
Lynchburg Invest. Corp. v. Rudolph, 40 App. D. C. 29	12
MacFarland v. Elverson, 32 App. D. C. 81	12
Murray v. La Guardia, 291 N. Y. 320	6
Neufield v. O'Dwyer, 79 N.Y.S. 53	6
N. Y. City Housing Authority v. Muller, 270 N. Y. 333, 1 N. E. 2d 153, 155	5, 9
1 Nichols Eminent Domain Sect. 4:7 et seq. (1950)	7
Opinion to the Governor, 76 R. I. 249, 260	11
R. G. Lydy v. Chicago, 190 N. E. 273	15
Richmond v. Southern Bell Tel. & Tel. Co., 174 U. S. 761	12
Ryerson v. Brown, 24 Am. Rep. 464	11
Salisbury Land Improvement Co. v. Commonwealth, 215 Mass. 371, 102 N. E. 619	10
Schecter Poultry Corp. et al. v. U. S., 295 U. S. 495, 55 Sup. Ct. 837	15, 16
State ex rel. Srigley v. Woodworth, 33 Ohio App. 406, 169 N. E. 713	15
Thompson v. Consolidated Gas Util. Corp., 300 U. S. 55, 57 Sup. Ct. 364, 376	7
U. S. v. Dettra Flag Co., 86 Fed. Sup. 84, 86	13
U. S. ex rel. T.V.A. v. Welch, 327 U. S. 546, 66 Sup. Ct. 715, 718	7
Varner v. Martin, 21 W. Va. 534	11
Webster v. Susquehanna Pole Line Co., 112 Md. 416, 76 A. 254	10
Yick Wo v. Hopkins, 118 U. S. 356, 6 Sup. Ct. Rep. 1064	15

STATUTES CITED

The District of Columbia Redevelopment Act of 1945 Code Title 5-701 et seq., 60 Stat. 790, printed herein as an Appendix.

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ANDREW PARKER, JOHN A. REMON, JAMES E. COLLIFLOWER, ET AL., *Appellees*

Appeal from the United States District Court for the District of Columbia

---

BRIEF FOR APPELLANTS

OPINION BELOW

The opinion of the Statutory Three-Judge Court in the United States District Court for the District of Columbia is reported at 117 Fed. Sup. 705.

JURISDICTION

The judgment of the Statutory Three-Judge Court in the United States District Court for the District of Columbia was entered on November 20, 1953. Jurisdiction of the Court rests upon the validity of the District of Columbia Redevelopment Act of 1945, 60 Stat. 790, District of Co-

lumbia Code, Title 5-701 et seq. (1951), and 28 U.S.C. Sec. 1253.

STATUTE INVOLVED

The District of Columbia Redevelopment Act of 1945, 60 Stat. 790, District of Columbia Code, Title 5-701, et seq. (1951) printed herein as an Appendix, is involved.

QUESTIONS PRESENTED FOR REVIEW

1. A statute enacted by Congress for the District of Columbia held constitutional, authorizes the seizure of private property by eminent domain, of realty, for the sole purpose of redeveloping an area according to the judgment of the administrators of the Act as to what a well-developed, well-balanced neighborhood would be, or merely because the property included is in an area designated by said administrators of the Act to be a slum or blighted area. May an administrative agency seize land by eminent domain solely for the purpose of redeveloping or because said property lies within an area designated by such agency as "slum" or "blighted"?

2. A statute enacted by Congress for the District of Columbia held constitutional the taking of private property for private use. Does a statute authorizing the taking of private property for private use violate the due process clause of the Fifth Amendment?

3. A statute enacted by Congress for the District of Columbia held constitutional the taking of commercial property not used for habitation wherein it provides for the discontinuance of the use for human habitation of substandard dwellings and of buildings in alleys and blighted areas and thereby eliminating such substandard housing conditions. Does such a statute empower an administrative agency to seize commercial property not used for human habitation?

4. A statute enacted by Congress for the District of Columbia held constitutional the seizure of private property

owing to technological and sociological changes, obsolete lay-outs and other factors, and conditions with respect to substandard housing and blighted areas wherein no ascertainable standards are defined except that of substandard housing. Is a statute which fails to include any ascertainable standards for guidance in carrying out its functions an unconstitutional delegation of legislative power to the administrative agency?

STATEMENT OF CASE

On August 2, 1946, Congress passed an act entitled *The District of Columbia Redevelopment Act of 1945.* It is an act to provide for the replanning and rebuilding of slum, blighted and other areas of the District of Columbia.

Through the various administrative agencies charged with the duties of carrying out this act an area was selected, a plan was adopted, accepted and approved by the Commissioners of the District of Columbia, and designated as "Project Area B". As a result of the final acceptance of the "Project Area B Plan" by the Commissioners of the District of Columbia on December 30, 1952, the Redevelopment Land Agency was then charged with the duty of assembling the land in said area and the transfer of same to a private concern who will redevelop the area.

At the time this Act was enacted, and up until the present time, the appellant's property was located at 712 Fourth Street, S.W., Washington, D. C., which property is in commercial use, being improved by a department store. No part of said premises is used as a dwelling, residence, house or for habitation.

This property is situated within the said Project Area which comprises approximately 76 acres of commercial and residential property. The commercial area borders Fourth Street, Southwest, a main thoroughfare. The boundary line of said area is carved out in an irregularly shaped pattern within the Southwest section, excluding certain commercial properties while including other commercial properties and the appellant's property.

The plan, adopted by the Commissioners of the District of Columbia, authorized the Redevelopment Land Agency to seize the real property of the Appellant, including all other properties in the designated area, which property will be demolished, leased or sold to a private redeveloping company who will replace the Appellant's commercial establishment with other or similar commercial establishments.

On or about December 30, 1952, the Commissioners of the District of Columbia, threatened to take Appellant's property in accordance with the afore-mentioned "Project Area B Plan". The Appellant, thereupon, filed a complaint questioning the constitutionality of the District of Columbia Redevelopment Act of 1945. To this complaint, the defendants filed a Motion to Dismiss on the ground that the complaint failed to state a claim upon which relief can be granted. Appellees filed in the alternative a Motion for a Summary Judgment on the ground that the Appellees are entitled to a judgment as a matter of law. Appellant filed opposition to above named motions and a counter-claim for summary judgment.

On November 20, 1953, the statutory three-judge court granted the Appellees' Motion to Dismiss and Appellant appeals from said verdict.

SUMMARY OF ARGUMENT

The District of Columbia Redevelopment Act of 1945 authorizes the seizure of private property for the sole purpose of redeveloping an area merely because said property is included within an area designated as a blighted area and such seizure is unconstitutional.

The District of Columbia Redevelopment Act of 1945 is unconstitutional because it allows seizure of private property for use other than public use and the Act therefore violates the due process clause of the Fifth Amendment of the Constitution of the United States.

The District of Columbia Redevelopment Act of 1945 is intended for the discontinuance of the use for human habi-

tation of substandard dwellings and of buildings in alleys and does not empower an administrative agency to seize Appellant's commercial property.

The District of Columbia Redevelopment Act of 1945 confers undescribed, unregulated authority and undefined powers to an administrative agency to seize in full ownership business and properties. This amounts to an unreviewable power to seize and sell whole sections of the city and said Act does not contain standards sufficient to sustain the validity of such a broad authorization.

ARGUMENT

I.

An Act Authorizing the Seizure of Private Property by Eminent Domain of Realty for the Sole Purpose of Redeveloping an Area Is Unconstitutional

The taking of private property for city redevelopment per se is not a public use.[1]

The District of Columbia Redevelopment Act of 1945 is neither a slum clearance or low cost housing program. In reality, it authorizes the seizure of private property by eminent domain of realty for such purposes as technological and sociological changes, obsolete lay-outs, blighted conditions and other factors.[2] This is wholly outside of the realm of slum clearance or low cost housing. It empowers the seizure by the Government, of one man's land to be sold to another man merely in order to create a well balanced community which better meets the Government's idea of what is appropriate or well designed. As yet, the Courts have not come to call such pleasant accomplish-

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[1] *Adams* v. *Housing Auth. of City Daytona Beach, etc.*, 60 S. 2d 663.

Housing Auth. of City of Atlanta, et al. v. *Johnson, et al.*, 74 S.E. 2d 891.

N. Y. City Housing Auth. v. *Muller*, 270 N.Y. 333, 1 N.E. 2d 153, 155.

[2] D. C. Code § 5-701 (1951); 60 Stat. 790 Chap. 736; Page 1, Sect. 2, Appendix.

ments a public purpose which validates government seizure of private property.[3]

The New York State Legislature recognized the necessity for amending their state constitution to insert the necessary language which would allow a redevelopment act in the state which would permit the acquiring of land solely for the purpose of redeveloping an area. The necessity for such an amendment was recognized by the Courts of New York in the cases of *Murray* v. *La Guardia*[4] and *Neufield* v. *O'Dwyer*.[5] This was done by Amendment 18 to the Constitution of the State of New York. In the case of the District of Columbia, while Congress is authorized to legislate for the said District in the same fashion as the state legislature may legislate for its particular state, yet Congress is bound by the Fifth Amendment to the Constitution of the United States which has not, as yet, been amended.

An examination of the Comprehensive Plan for the District of Columbia, in its entirety, including Project Area B, discloses that the Act is a real estate promotional scheme wherein the Appellant will lose his commercial property to a redeveloping company who will replace it with similar commercial property.

The Supreme Court of Florida, in construing a similar redeveloping statute, said, in *Adams* v. *Housing Authority of City of Daytona*, supra,[6]

> "The question in this case is not simply the abatement or discontinuance of a nuisance or a blighted area. This is not simply a case of slum clearance in order to promote the public health, safety, morals and general welfare of the inhabitants and citizens of Daytona Beach. On its face it is a redevelopment plan and a mere inspection of the plan shows it to be a real estate promotion. The very words of the plan declare

[3] Fifth Amendment to the Constitution of The U. S.

[4] 291 N. Y. 320.

[5] 79 N. Y. S. 53.

[6] Supra, 60 S. 2d 663.

it to be for the purpose of acquiring title to and the ownership of several blocks of property constituting 6½ acres now used for residences to be redeveloped and sold or leased to private individuals, associations or corporations for private, commercial and industrial purposes."

II.

A Statute Authorizing the Seizure of Private Property for Private Use Violates the Due Process Clause of the Fifth Amendment

It is a universally established rule that private property cannot be constitutionally taken by eminent domain except for public use.[7]

Mr. Justice Brandeis said, in *Thompson* v. *Consolidated Gas Utility Corp.*,[8] "This Court has many times warned that one person's property may not be taken for the benefit of another private person without a justifying public purpose even though compensation be paid."

U. S. ex rel. T.V.A. v. *Welch*[9] did not repudiate this principle, but affirmed it.

Congress, in enacting the District of Columbia Redevelopment Act of 1945, specifically sets forth that certain of the land seized shall be solely for public purposes and the remainder for private purpose. Title 5-706, D. C. Code (1951); Appendix, p. 6, Sect. 7(a) and (b); 60 Stat. 795, Chap. 736, Sect. 7, is entitled, "TRANSFER, LEASE OR SALE OF REAL PROPERTY IN PROJECT AREA FOR PUBLIC AND PRIVATE USE." Subsection (a) states,

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[7] *Hirsch* v. *Block*, 50 App. D.C. 56.
Heitmuller v. *Stokes*, 49 App. D.C. 391.
General Petrol Corp. v. *Hobon*, 23 F. 2d 349.
Cole v. *La Grange*, 28 L. Ed. 896.
Cooley, Constitutional Limit. 1124 et seq. 8th Ed. 1923.
1 Nichols—Eminent Domain Sect. 4.7 et seq. (1950).

[8] 300 U.S. 55, 57 Sup. Ct. 364, 376.

[9] 327 U.S. 546, 66 Sup. Ct. 715, 718.

> "After the real property in the project area shall have been assembled by the Agency, the Agency shall have the power to transfer * * * by deeds to the United States or to the District of Columbia * * * those pieces of real property which, * * * are to be devoted to public uses (other than public housing) * * * such as streets and other utilities and works, Federal and District public buildings, public recreational spaces, and schools." * * *

Subsection (b) states,

> "The Agency shall have the power to lease or sell the remainder of the project area as an entirety to a redevelopment company or to an individual or partnership. Said remainder may include streets or parts thereof which in accordance with the plan are to be closed or vacated or other than publicly owned property." * * *

The taking of the Appellant's property will be accomplished under the aforesaid subsection (b) in that his property is not to be used for any of the public purposes outlined in subsection (a) but is to be conveyed to a redeveloping company exclusively for private use, i.e. commercial property.

Under the District of Columbia Redevelopment Act of 1945, the greater portion of the properties to be seized by the Government and conveyed to the redeveloper, will be used for private purposes, such as commercial businesses, hotels, office buildings, private housing and the like. The redeveloper will own, manage and supervise this lucrative enterprise for his own use and benefit.

The Appellant is placed in the unenviable position of not being able to remodel or redevelop his own property under the provisions of the Act, and is pressed in the position of attempting to compete against large private developers for the purchase of his own property.

Because of the promotional aspects of redeveloping and the lucrativeness of such an attractive program whole

sections of a city are vested in powerful financial interests to the exclusion, detriment and loss of ownership to the individual property owner.

The Florida Supreme Court recognized this evil in *Adams* v. *Housing Authority of City of Daytona*, supra, by saying,

> "It is inconceivable that any one would seriously contend that the acquisition of real estate for the declared purposes set forth in the proposed redevelopment plan is for a public use or purpose. No one has ever heard of any corporation, association or individual going into any of the above mentioned businesses except for profit or gain. If the municipalities can be vested with any such power or authority, they can take over the entire field of enterprise without limit so long as they can find a blighted area containing sufficient real estate."

New York State, also, recognized this evil in *N. Y. City Housing Authority* v. *Muller*, supra, wherein the Court stated,

> "Nothing is better settled than the property of one individual can not, without his consent, be devoted to the private use of another, even where there is an incidental or colorable benefit to the public."

Admittedly, the removal of slum is a sound purpose. However, the seizure of the fee to realty, upon which the slum property exists, does not eliminate the slum condition. It is obvious that the seizure of the appellant's commercial property, which is concededly not slum property, for the sole reason that it lies within a close proximity to substandard housing and for the purpose of subsequent sale to a private developer, who will construct a similar commercial improvement thereon for his own use, benefit and gain, does not eliminate the slum condition existing in the other properties. The seizure of the appellant's fee does not encompass a public purpose and is repugnant to the Constitution.

The attempt to extend the concept of eminent domain, to encompass public purpose apart from public use, are potentially dangerous to basic principles of our system of government. It behooves the courts to be alert lest currently attractive projects impinge upon fundamental rights.

The stated purpose of the government in justifying the seizure of the appellant's commercial property is that parts of the commercial area contain a high proportion of old buildings and that their ownership is diverse and that most of the stores operate on a leasehold basis and that in order to bring about the eventual recreation of the commercial area as a sound business center, the Land Agency must take the properties for redevelopment for a new, modern shopping center.

The taking of the Appellant's property because the government believes that diverse ownership and lease-hold interest are not conducive to a sound business center may seem attractive and in all probabilities it would enhance the character of the area to place said ownership under a single entity, but it is inconceivable that such pleasant accomplishments can be called a public use or purpose which would validate seizure by the sovereign of private property. The present commercial area in Southwest, including the Appellant's property, can serve the community equally as well as national chain stores, which the agencies deem preferable for the occupancy of the proposed shopping center.

When a statute authorizes a single taking for uses both public and private and does not limit the extent of the taking to the necessities of the public use, and the uses are so commingled that they cannot be separated and the taking for private use disregarded, the whole statute is unconstitutional.[10]

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[10] *Cincinnati* v. *Vester*, 32 F. 2d 242, Aff. 281 U.S. 439;
Webster v. *Susquehanna Pole Line Co.*, 76 A. 254, 112 Md. 416.
Gaylor v. *Sanitary Dist.*, 204 Ill. 576, 68 N.E. 522.
Salisbury Land Imp. Co. v. *Commonwealth*, 102 N.E. 619, 215, Mass. 371.

> "However, by our present opinion we are not to be understood as holding that under this act a community through an agency may engage in a redevelopment project based mainly upon aesthetic view or upon considerations of economic advantage to the municipality or a combination of both."[11]

There is no doubt that Congress may delegate the power to clear slums or to delegate the full of the police power to the District Government. However, all of the conditions complained of by the government can be remedied by use of the policing regulations presently existing in the District of Columbia. There is no compelling need to seize the title to the Appellant's property to accomplish any of the purposes set forth in Section 2 of the Act. There is no necessity of seizing the title to Appellant's property because his neighbor's property is socially or economically undesirable.

> "To justify eminent domain, it must be impossible, or very difficult at least, to secure the same public uses and purposes in any other way than by authorizing the condemnation of private property."[12]

III.

The Redevelopment Act Does Not Authorize the Seizure of Commercial Property Not Used for Human Habitation

The District of Columbia Redevelopment Act of 1945 is in derogation of the common law and it therefore must be strictly construed. The statute is silent as to the taking of commercial property and an examination of the entire Act fails to disclose any reference to commercial property whatsoever. The whole tenure and purpose of the Act is directly towards housing.

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[11] Opinion to the Governor, 76 R.I. 249, 260.

[12] *Varner* v. *Martin*, 21 W. Va. 534.
Joran v. *Woodward*, 40 Me. 317.
Ryerson v. *Brown*, 24 Am. Rep. 464.
Dayton Mining Co. v. *Seawell*, 11 Nev. 394.

In *Fay* v. *MacFarland*,[13] the Court states, "Statutes like the present, authorizing the taking of private property for public use, are to be strictly construed."

Title 5-704 of the District of Columbia Code (1951) shows that the power to acquire and assemble real property by various means is subject to and in accordance with the procedures, conditions and other provisions in the other sections of the Act. Title 5-701 of the District of Columbia Code (1951) which states the general purposes of the Act states that the purpose is to eliminate substandard housing, blighted areas, including the uses of buildings in alleys as dwellings for human habitation. Further, in the same section, the purpose is stated as being to effectuate the discontinuance of the use for human habitation in the District of Columbia of substandard dwellings and of buildings in alleys and blighted areas and thereby to eliminate the substandard housing conditions and the communities in the inhabited alleys and blighted areas in such district.

The acquisition of Appellant's commercial property is not for the purpose of the elimination of the substandard housing and inhabited alleys referred to in the Act, and is beyond the scope of the authority set forth in the statute and such seizure is without due process of law.

Nowhere does the Act give the Redevelopment Land Agency specific authority to take commercial property. Even when the power has been expressly granted, the grant, itself, and the extent thereof will be construed strictly against the grantee. The latter will not be able to take the lands of another unless such rights comes clearly and unmistakably within the limits of the authority granted.

Richmond v. *Southern Bell Telephone & Telegraph Co.*, 174 US 761
MacFarland v. *Elverson*, 32 App. D.C. 81

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[13] 32 App. D.C. 295.
Lynchburg Inv. Corp. v. *Rudolph*, 40 App. D.C. 29.
Cincinnati v. *Vester*, Supra.

It is a basic constitutional concept that the powers that are enumerated in an act restrict an administrative agency to those enumerated powers, and whatever is not plainly given is to be construed as withheld.

IV.

The District of Columbia Redevelopment Act of 1945 Does Not Contain Standards Sufficient to Sustain Its Validity

The Redevelopment Act does not contain standards sufficiently definite to sustain the validity of an authorization for seizing Appellant's property.

Nowhere in the Act is there a standard for the factual determination of a blighted area; obsolete lay-out; technological and sociological changes; and other factors. *Quere*, How can the judiciary determine how an administrative body determined a blighted area or obsolete lay-outs or technological or sociological changes or other factors? No standard other than "substandard housing" is defined. An examination of the definitions on page 2 of the Act (Appendix P. 2) discloses that there are no definitions of the above phrases.

States having similar redevelopment acts set out standards specifically and define such terms as blight, etc. For example, Rhode Island—*Public Law 1946, Chapt. 1802* (as amended) *Illinois Annoted Statutes Chap. 32 Sect. 550.*

In the case of *U. S.* v. *Dettra Flag Co.*, 86 Fed. Supp. 84, 88, the Court states, "Beginning with *Field* v. *Clark*, 143 U.S. 649, through to the present, the general legal dogmas which control delegation of ministerial duties have been evolved. Congress must establish definite standards to be followed and policies to be effectuated * * *. Within these standards the administrator may exercise his discretion in the application and enforcement of the statute in order to carry out its purpose. Congress may not delegate nor may an administrator usurp the legislative function. Intelligent principles and definite standards must be stated to guide, control and limit the execution of the

statute; they cannot be left to the administrator's discretion."

The Redevelopment Act which sets up no standards but merely uses general terms such as "slum," "blight" and "other factors" gives unregulated discretion to the administrative agency and there is an unconstitutional delegation of legislative power because there is an absence of any ascertainable standards for guidance in carrying out its functions.

Lichter v. *U. S.*, 160 Fed. 2d 329

The inadequacy of the statutory prescription is demonstrated by the proposed boundary line of Project Area B. There is in the statute no measuring means by which to tell why one property on Fourth Street is to be seized, or can be seized validly, while another property on the same side of the same block, or across the street, or in the next block is not included in the area to be condemned.

The Appellant's property is to be seized by the Agency while excluding a theater on the same side of the street, a block away, and a gas station across the street from the Appellant's property. Other properties in the area are excluded. *Quere*, What standard in the Act was used by the agency to justify the taking of the Appellant's property because it is situated in an area designated as "blighted" while excluding other properties?

There can be no sound, sensible, compelling or justifying reason for taking the Appellant's property in the area while excluding other properties in the same area. The Agency's attempt to justify the exclusion of a theater and a gas station is based on two grounds, (1) That the cost of acquiring the property and replacing same would be economically unsound, and (2) That, in every well-balanced community it is necessary to have a theater and gas station. If this be the justifying reason, then by the same token, the appellant's property which houses a department store, is needed. Likewise the tailor shop, hardware store, restaurant and

other businesses which now operate in the area are needed to round out a well balanced and planned community.

It is because the Act gives the Administrative Agency an unregulated and unrestricted discretion to seize property, that they can take one block, 76 acres or even the whole city. Such unregulated taking would cut the very foundation from under the sacred and inalienable right of the freedoms guaranteed the Appellant under the Constitution. An act granting such broad and undefined powers is unconstitutional.

Schecter Poultry Corp. et al. v. *U. S.*, 295 U.S. 495, 55 Sup. Ct. 837

The enactment of a statute which is lacking in definite standards places in the hands of the authorities arbitrary discretion and subjects the constitutional rights of the individual to the arbitrary discretion of local authorities, there being nothing in the statute to guide or control the exercise of the vested discretion, and control within reasonable limits is essential to constitutionality.[14]

The indiscriminate taking and the unrestricted and undefined powers of the administrative agencies are best evidenced by the fact that one city block of commercial property in the heart of downtown Washington has been designated as a "blighted area", and the balance of Southwest, approximately 344 acres, has also been declared to be a "blighted area." The lack of standards in the Act permit the agency to determine the size, shape and use of an area without any administrative review or means of questioning the propriety of the taking.

The desires of the administrative agencies to mold the city and the delegation of authority to the agencies to deter-

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[14] *Hewitt* v. *State Medical Examiner*, 148 Cal. 590; 84 P. 39;
In Re Tai Kee, 12 Hall 164;
Yick Wo v. *Hopkins*, 118 U.S. 356, 6 S. Ct. Rep. 1064;
R. G. Lady v. *Chicago*, 190 N.E. 273;
State Ex. Rel. Srigley v. *Woodworth*, 33 Ohio App. 406, 169 N.E. 713.

mine in their own opinion what should be taken, when it should be taken, and what should be done with it, without any guide, control or standard restricting the seizure of the property at their own will supersedes the legislative power of Congress.[15] The tentacles of the agencies' unrestricted taking will reach out and engulf the entire city. Unless and until Congress, pursuant to Constitutional power, enacts specific legislation empowering the government to seize Appellant's property by use of the power of eminant domain under the District of Columbia Redevelopment Act of 1945, and said Act sets forth standards sufficient to guide the administrative agencies, said Act should be declared void and unconstitutional.

CONCLUSION

In view of the foregoing, we pray that this Court will reverse the decision of the Statutory Three-Judge Court of the District Court of the United States for the District of Columbia, and declare the District of Columbia Redevelopment Act of 1945 unconstitutional.

Respectfully submitted,

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[15] *Shechter Poultry Co.* v. *U. S.*, Supra.

APPENDIX

[PUBLIC LAW 592—79TH CONGRESS]

[CHAPTER 736—2D SESSION]

[S. 1426]

AN ACT

To provide for the replanning and rebuilding of slum, blighted, and other areas of the District of Columbia and the assembly, by purchase or condemnation, of real property in such areas and the sale or lease thereof for the redevelopment of such area in accordance with said plans; and to provide for the organization of, procedure for, and the financing of such planning, acquisition, and sale or lease; and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "District of Columbia Redevelopment Act of 1945".

GENERAL PURPOSES

SEC. 2. It is hereby declared to be a matter of legislative determination that owing to technological and sociological changes, obsolete lay-out, and other factors, conditions existing in the District of Columbia with respect to substandard housing and blighted areas, including the use of buildings in alleys as dwellings for human habitation, are injurious to the public health, safety, morals, and welfare, and it is hereby declared to be the policy of the United States to protect and promote the welfare of the inhabitants of the seat of the Government by eliminating all such injurious conditions by employing all means necessary and appropriate for the purpose; and control by regulatory processes having proved inadequate and insufficient to remedy the evils, it is in the judgment of Congress necessary to acquire property in the District of Columbia by gift, purchase, or the use of eminent domain to effectuate the declared policy by the discontinuance of the use for human habitation in the District of Columbia of substandard dwellings and of buildings in alleys and blighted areas, and thereby to eliminate the substandard housing conditions and the communities in the inhabited alleys and blighted areas in such District; and it is necessary to modernize the planning and development of such portions of such District. The Congress finds that the foregoing cannot be accomplished by the ordinary operations of private enterprise alone without public participation in the planning and in the financing of land assembly for such development; and that for the economic soundness of this redevelopment and the accomplishment of the necessary social and economic benefits, and by reason of the close relationships between the development and uses of any part of an urban area with the development and uses of all other parts the sound replanning and redevelopment of an obsolescent or obsolescing portion of such District cannot be accomplished unless it be done in the light of comprehensive and coordinated planning of the whole of the territory of the District of Columbia and its environs; and that this comprehensive planning and replanning should proceed vigorously without delay; and to these ends it is necessary to enact the provisions hereinafter set forth; and that the

acquisition and the assembly of real property and the leasing or sale thereof for redevelopment pursuant to a project area redevelopment plan, all as provided in this Act, is hereby declared to be a public use.

DEFINITIONS

SEC. 3. The following terms, whenever used or referred to in this Act, shall, for the purposes of this Act and unless a different intent clearly appears from the context, be construed as follows:

(a) The term "Agency" means the District of Columbia Redevelopment Land Agency established by section 4 of this Act.

(b) "District Commissioners" means the Board of Commissioners of the District of Columbia.

(c) "Housing" includes housing, dwelling, habitation, and residence.

(d) "Housing project" means any low-rent housing (as defined in the United States Housing Act of 1937, U. S. C., title 42, ch. 8), the development or administration of which is assisted by the United States Housing Authority.

(e) "Land" includes bare or vacant land, or the land under buildings, structures, or other improvements; also water and land under water. When employed in connection with "use", as for instance, "use of land" or "land use", "land" also includes buildings, structures, and improvements existing or to be placed thereon.

(f) "Low-rent housing" means safe and sanitary housing within the financial reach of families of comparatively low income and, as a guide for the standard of rental to be used as a maximum at the time of the enactment of this law but not necessarily thereafter, it is specified that such housing shall be rented at not more than $13 per room per month, excluding utilities.

(g) "Lessee" includes the successors or assigns and successors in title of any lessee.

(h) "Planning Commission" means the National Capital Park and Planning Commission.

(i) "Proceeds" means the money proceeds of sales or transfers by the Agency; and "net proceeds" means the gross proceeds after deducting commissions or other expenses of the sales or transfers.

(j) "Project area" is an area of such extent and location as may be adopted by the Planning Commission and approved by the District Commissioners after public hearing as an appropriate unit of redevelopment planning for a redevelopment project separate from the redevelopment projects for other parts of the District of Columbia. In the provisions of this Act relating to lease or sale by the Agency, for abbreviation "project area" is used for the remainder of the project area after taking out those pieces of property which in accordance with section 7 (a) of this Act shall have been or are to be transferred for public uses.

(k) "Public low-rent housing" means low-rent housing constructed by a public agency for families of low income, at rentals which (including the value or cost to tenants of heat, light, water, and cooking fuel) shall not exceed one-fifth of the highest net family income of families eligible for tenancy in such housing, as herein provided. The dwellings in public low-rent housing shall be available solely for such families of low income whose net family income does

not exceed the maximum net family income falling within the lowest 20 per centum by number of all family incomes in the District of Columbia, as such maximum net family income shall have been determined, or from time to time redetermined after public hearing, by the District Commissioners. At the end of one year after the enactment of this Act this definition shall be reexamined by the Commissioners for the District of Columbia and a public hearing shall be held thereon to determine whether administrative or interpretive difficulties or unsatisfactory progress in the provision of low-rent housing requires a modification thereof. Upon the conclusion of such hearing the Commissioners shall forthwith make recommendations to Congress whether said definition should be modified and, if so, to what extent.

(l) "Purchaser" includes the successors or assigns and successors in title of any purchaser.

(m) "Real property" includes land; also includes land together with the buildings, structures, fixtures, and other improvements thereon; also includes liens, estates, easements, and other interests therein; and also includes restrictions or limitations upon the use of land, buildings, or structures other than those imposed by exercise of the police power.

(n) "Redevelopment" means replanning, clearance, redesign, and rebuilding of project areas, including open-space types of uses, such as streets, recreation and other public grounds, and spaces around buildings, as well as buildings, structures, and improvements, but not excluding the continuance of some of the existing buildings or uses in a project area. For the purposes of this Act, "redevelopment" also includes the replanning, redesign, and original development of undeveloped areas which, by reason of street lay-out, lot lay-out, or other causes, are backward and stagnant and therefore blighted and for which replanning and land assembly are deemed necessary as a condition of sound development.

(o) "Redevelopment company" means a private or public corporation or body corporate, whether organized under the District of Columbia Code or the laws of the United States or any State, or an unincorporated association, trust, or other legal entity, which, by virtue of the statutes, charter, articles of incorporation, instruments of trust, or other instrument defining its powers, has the power to become a lessee or purchaser of a project area and to conform to the provisions of this Act and to perform fully and comply with the terms of the lease or sale of such area or part thereof to it.

(p) "Rentals" means the rents specified in a lease to be paid by the lessee to the Agency; "net rentals" means gross rentals after deducting taxes payable by the Agency.

(q) "Revenues" means the revenues or income received by the Agency from real property while held by it and operated or temporarily let by it and not yet leased, transferred, or sold by it; and "net revenues" means the gross revenues after deducting repair, management, maintenance, insurance, and other operating expenses and taxes paid or payable by the Agency.

(r) "Substandard housing conditions" means the conditions obtaining in connection with the existence of any dwelling, or dwellings, or housing accommodations for human beings, which because of lack of

sanitary facilities, ventilation, or light, or because of dilapidation, overcrowding, faulty interior arrangement, or any combination of these factors, is in the opinion of the Commissioners detrimental to the safety, health, morals, or welfare of the inhabitants of the District of Columbia.

ESTABLISHMENT AND POWERS OF THE AGENCY

SEC. 4. (a) The District of Columbia Redevelopment Land Agency is hereby established and shall be composed of five members. Two members shall be appointed by the President and three members shall be appointed by the District Commissioners, subject to confirmation by the Senate. One of the Presidential appointees may be an official of the United States Government; one appointee of the District Commissioners may be an official of the District of Columbia Government. Each nonofficial appointee shall have been a resident of the District of Columbia for at least the five next preceding years, and shall have been engaged or employed during such time in private business or industry, or the private practice of a profession, in the District of Columbia. The terms of members shall be for five years, except that the first appointment of one of the Presidential appointees shall be for three years and the other for five years; one of the first appointments of the District Commissioners shall be for four years, one for two years, and one for one year: *Provided*, That in the event any member shall cease to hold the official position held by him at the time of his designation or appointment, such cessation shall be deemed to create a vacancy in his membership on the Agency, such vacancy, as well as all vacancies from other causes, to be filled by designation or appointment by the President or District Commissioners for the unexpired term. The members shall receive no salary as such, but those members who hold no other salaried public position shall be paid a per diem of $20 for each day of service at meetings or on the work of the Agency.

(b) The said District of Columbia Redevelopment Agency is hereby made a body corporate of perpetual duration, the powers of which shall be vested in and exercised by the board of directors thereof, consisting of the five members thereof appointed as above set forth. It shall have the power to adopt, alter, and use a corporate seal which shall be judicially noticed; to make contracts; to sue and be sued, to complain and defend in its own name in any court of competent jurisdiction, State, Federal, or municipal; to make, deliver, and receive deeds, leases, and other instruments and to take title to real and other property in its own name; to adopt, prescribe, amend, repeal, and enforce bylaws, rules, and regulations for the exercise of its powers under this Act or governing the manner in which its business may be conducted and the powers granted to it by this Act may be exercised and enjoyed, including the selection of its chairman and other officers, together with provisions for such committees and the functions thereof as it may deem necessary for facilitation of its work; to protect and enforce any right conferred upon it by this Act, or otherwise acquired, including any lease, sale, or other agreement made by or with it; and in general to exercise all the powers necessary or proper to the performance of its duties and functions under this Act.

POWER TO ACQUIRE AND ASSEMBLE REAL PROPERTY

SEC. 5. (a) Subject to and in accordance with the procedures, conditions, and other provisions of this Act, the Agency is hereby granted the power to further the redevelopment of blighted territory in the District of Columbia and the prevention, reduction, or elimination of blighting factors or causes of blight and for that purpose to acquire and assemble real property by purchase, exchange, gift, dedication, or eminent domain, and including the power to rent, maintain, manage, operate, repair, clear, transfer, lease, and sell such real property, but excluding the power to build new structures thereon (other than the improvements mentioned in section 7 (i) or the power to enlarge, extend, or make major structural improvements of existing buildings).

(b) Condemnation proceedings for the acquisition of real property for said purposes shall be conducted in accordance with the procedural provisions of the Act entitled "An Act to provide for the acquisition of land in the District of Columbia for the use of the United States", approved March 1, 1929 (45 Stat. 1415), or Acts which may amend or supplement said Act. The title to properties acquired under this present Act shall be taken by and in the name of the Agency and proceedings for condemnation or other acquisition of property shall be brought by and in the name of the Agency.

GENERAL AND PROJECT AREA REDEVELOPMENT PLANS

SEC. 6. (a) The Planning Commission is hereby directed to make and, from time to time, develop a comprehensive or general plan of the District of Columbia, including the appropriate maps, charts, tables, and descriptive, interpretative, and analytical matter, which plan is intended to serve as a general framework or guide of development within which the various project areas may be more precisely planned and calculated, and which comprehensive or general plan shall include at least a land-use plan which designates the proposed general distribution and general locations and extents of the uses of the land for housing, business, industry, recreation, education, public buildings, public reservations, and other general categories of public and private uses of the land.

(b) For the exercise of the powers granted to the Agency by this Act for the acquisition and disposition of real property for the redevelopment of a project area, the following steps and plans shall be requisite, namely:

(1) Adoption by the Planning Commission of the boundaries of the project area proposed by it, submission of such boundaries to the District Commissioners, and approval thereof by said Commissioners.

(2) Adoption by the Planning Commission and submission to, and, after a public hearing thereon, approval by the District Commissioners, of the redevelopment plan of the project area which shall contain a site and use plan for the redevelopment of the area, including the approximate locations and extents of the land uses proposed for and within the area, such as public buildings, streets, and other public works and utilities, housing, recreation, business, industry, schools, public and private open spaces, and other categories of public and private uses. Such

plan shall also contain specifications of standards of population density and building intensity. Any such plan may also specify, by means of specification of maximum rentals or other basis, the amount or character or class of any low-rent housing for which the area or part thereof is proposed to be redeveloped.

(c) In relation to the location and extent of public works and utilities, public buildings, and other public uses in the general plan or in a project area plan, the Planning Commission is directed to confer with the Federal and District public officials, boards, authorities, and agencies under whose administrative jurisdictions such uses respectively fall. In the project area planning, the Planning Commission is directed to consult from time to time with the Agency, and the Agency shall be free at all times to submit to the Planning Commission suggestions regarding both the location and extent of project areas and the use and site plans of project areas.

(d) After a project area redevelopment plan shall have been adopted by the Planning Commission and approved by the District Commissioners, the Planning Commission shall forthwith certify said plan to the Agency, whereupon said Agency shall proceed to the exercise of the powers granted to it in this Act for the acquisition and assembly of the real property of the area. Following such certification, no new construction shall be authorized by the District Commissioners in such area, including substantial remodeling or conversion or rebuilding, enlargement or extension or major structural improvements on existing buildings, but not including ordinary maintenance or remodeling or changes necessary to continue the occupancy.

TRANSFER, LEASE, OR SALE OF REAL PROPERTY IN PROJECT AREA FOR PUBLIC AND PRIVATE USES

SEC. 7. (a) After the real property in the project area shall have been assembled by the Agency, the Agency shall have the power to transfer to and shall at a practicable time or times transfer by deeds to the United States or to the District of Columbia, or to the appropriate Federal or District public body, department, or agency, those pieces of real property which, in accordance with the approved project area redevelopment plan, are to be devoted to public uses (other than public housing) falling within the construction or administrative jurisdiction of Federal or District agencies, such as streets and other utilities and works, Federal and District public buildings, public recreational spaces, and schools. The Federal agencies and the public agencies of the District of Columbia are hereby empowered, respectively, to acquire real property from the Agency for the uses respectively specified in the project area plan and to pay for same out of their funds duly appropriated for such acquisition. Excepting for such property as may be transferred by dedication, gift, or exchange, the transferee agency shall pay to the Agency such sum as may be agreed upon or, in the absence of agreement, as may be fixed by the Chief Justice of the District Court of the United States for the District of Columbia.

(b) The Agency shall have the power to lease or sell the remainder of the project area as an entirety to a redevelopment company or to an individual or a partnership. Said remainder may include streets or parts thereof which in accordance with the plan are to be closed or

vacated or other than publicly owned properties; and the Federal and District departments and agencies are empowered to transfer said spaces or properties to the Agency for such sums or other consideration as may be agreed upon.

(c) Any such lease or sale may be made without public bidding but only after a public hearing, after ten days' public notice, by the Agency upon the proposed lease or sale and the provisions thereof.

(d) The term of any such lease shall be fixed by the Agency and the instrument of lease may provide for renewals upon reappraisals and with rentals and other provisions adjusted to such reappraisals. Every such lease or sale shall provide that the lessee or purchaser shall carry out or cause to be carried out the approved project area redevelopment plan or approved modifications thereof and that no use shall be made of any land or real property included in the lease or sale nor any building or structure erected thereon which does not conform to such approved plan or approved modifications thereof. In the instrument, or instruments, of lease or sale, the Agency may include such other terms, conditions, and provisions as in its judgment will provide reasonable assurance of the priority of the obligations of the lease or sale and of conformance to the plan over any other obligations of the lessee or purchaser and also assurance of the financial and legal ability of the lessee or purchaser to carry out and conform to the plan and the terms and conditions of the lease or sale; also, such terms, conditions, and specifications concerning buildings, improvements, subleases, or tenancies, maintenance and management, and any other related matters as the Agency may reasonably impose or approve, including provisions whereby the obligations to carry out and conform to the project area plan shall run with the land. In the event that maximum rentals to be charged to tenants of housing be specified, provision may be made for periodic reconsideration of such rental bases, with a view to proposing modification of the project area plan with respect to such rentals.

(e) Until the Agency certifies that all building constructions and other physical improvements specified to be done and made by the purchaser of the area have been completed, the purchaser shall have no power to convey the area, or any part thereof, without the consent of the Agency; and no such consent shall be given unless the grantee or mortgagee of the purchaser obligates itself or himself by written instrument to the Agency to carry out that portion of the redevelopment plan which falls within the boundaries of the conveyed property, and also that the grantee, his or its heirs, representatives, successors, and assigns, shall have no right or power to convey, lease, or let the conveyed property or any part thereof or erect or use any building or structure erected thereon free from the obligation and requirement to conform to the approved project area redevelopment plan or approved modifications thereof.

(f) In lieu of the lease or sale of a project area as an entirety, the Agency shall have the power to lease or sell parts of such area separately to individuals, partnerships, or redevelopment companies. Any such sale or lease of a part or parts of a project area shall be fully subject to the provisions of subsections (c), (d), and (e) of this section.

(g) No lease or sale of any project area or portion thereof shall be made by the Agency to any public redevelopment company unless

the terms of such lease or sale shall provide greater compensation to the Agency than any offer or combination of offers based on substantially the same area and substantially the same redevelopment plan which shall be received from any responsible private sources (eligible as purchasers or lessees under this Act) within a reasonable announced period of time (not less than thirty days) after the public hearing on such proposed lease or sale. It is the intent of this provision that private enterprise as represented through a responsible private redevelopment company, individual, or partnership shall be given a preference over any public redevelopment company in such lease or sale provided such preference can be given, in the judgment of the Agency, consistently with the protection of the public interest and consistently with a purpose to resort to a public redevelopment company only in the event that private enterprise shall not reasonably be available for the development of the project area or the part thereof under consideration.

(h) The Agency may itself demolish any existing structure or clear the area or any part thereof, or may specify the demolition and clearance to be performed by a lessee or purchaser within a reasonable time after such lease or purchase. The Agency may specify a reasonable time schedule and reasonable conditions for the construction of buildings and other improvements by a lessee or purchaser: *Provided*, That any such time schedule or condition shall be specified prior to the offering of the area or part thereof for lease or sale, and shall be equally binding upon any purchaser or lessee, public or private. The cost of demolition or clearance made by the Agency pursuant to this subsection shall be treated as an item of cost of the acquisition of the area.

(i) In order to facilitate the lease or sale of a project area or, in the event that the lease or sale is of parts of an area, then to facilitate the leases or sales of such parts, the Agency shall have the power to include in the cost payable by it the cost of the construction of local streets and sidewalks within the area or of grading and other local public surface or subsurface facilities necessary for shaping the area as the site of the redevelopment of the area. The Agency may arrange with the appropriate Federal or District agencies for the reimbursement of such outlays from funds or assessments raised or levied for such purposes.

HOUSING FOR DISPLACED FAMILIES

SEC. 8. (a) Prior to approval by the District Commissioners, pursuant to subparagraph (2) of subsection 6 (b), of any redevelopment plan, the District Commissioners shall satisfy themselves (and shall so state at the public hearing required by such subparagraph) that decent, safe, and sanitary housing, substantially equal in quantity to the number of substandard dwelling units to be removed or demolished within the project area, under the proposed redevelopment plan, are available or will be provided (by construction pursuant to the redevelopment plan, or otherwise) in localities, and at rents or prices, within the reach of the low-income families displaced or to be displaced (temporarily or permanently), pursuant to the redevelopment plan, from the project area.

(b) Families displaced by slum clearance or redevelopment under this Act shall be given preference as tenants to fill vacancies occurring

in housing owned or operated within the District of Columbia by Federal or District of Columbia governmental agencies until appropriate housing is available to such families.

ACQUISITION OF PROPERTY FROM PROSPECTIVE LESSEE OR PURCHASER

SEC. 9. As an aid in the acquisition of the real property of a project area, the Agency may accept a fund or, at an agreed value, any parcel or parcels of property within such area, from any redevelopment company or partnership or individual, subject to a provision that in the event the supplier of any such fund or the conveyor of such property shall become the purchaser of the project area or any part or parts thereof such fund or the agreed value of such property shall be credited on the purchase price of such area or part thereof and if there be an excess above the cost of acquisition of the area such excess shall be returned, and that in the event that such supplier or conveyor does not become the purchaser of such area or any part thereof, the amount of the fund or the agreed value of such property (as the case may be) shall be paid to such supplier or conveyor.

USE-VALUE APPRAISALS

SEC. 10. After the Agency shall have assembled and acquired the real propert of a project area, it shall, as an aid to it in determining the rentals and other terms upon which it will lease or the price at which it will sell the area or parts thereof, place a use-value upon each piece or tract of land within the area which, in accordance with the plan, is to be used for private uses or for low-rent housing, such use-value to be based on the planned use; and, for the purpose of this use valuation, it shall cause a use-value appraisal to be made by two or more land-value experts employed by it for the purpose; but nothing contained in this section shall be construed as requiring the Agency to base its rentals or selling prices upon such appraisal.

The aggregate use value placed, for purposes of lease or sale, upon all land, within a particular project area, leased or sold by the Agency pursuant to this Act shall be not less than one-third of the aggregate cost to the Agency of acquiring all such land (excluding the cost of old buildings destroyed and the demolition and clearance thereof).

PROTECTION OF REDEVELOPMENT PLAN

SEC. 11. (a) Previous to the execution and delivery by the Agency of a lease or conveyance to a redevelopment company or previous to the consent by the Agency to an assignment or conveyance by a lessee or purchaser to a redevelopment company, the articles or certificate of incorporation or association or charter or other basic instrument of such company shall contain provisions so defining, limiting, and regulating the exercise of the powers of the company that neither the company nor its stockholders, its officers, its directors, its members, its beneficiaries, its bondholders, or other creditors or other persons shall have any power to amend or to effect the amendment of the terms and conditions of the lease or the terms and conditions of the sale without the consent of the Agency or, in relation to the project area redevelopment plan, without the approval of any proposed modification in accordance with the provisions of section 12 of this Act; and no action of stockholders, officers, directors, bondholders, creditors, partners

or other persons, nor any reorganization, dissolution, receivership, consolidation, foreclosure, or any other change in the status or obligation of any redevelopment company, partnership, or individual in any litigation or proceeding in any Federal or other court shall effect any release or any impairment or modification of the lease or terms of sale or of the project area redevelopment plan unless such consent or approval be obtained.

(b) Redevelopment corporations may be organized under the provisions of subchapter 4 of chapter XVIII of the Code of Law for the District of Columbia approved March 3, 1901, as amended (title 29, ch. 2 of the District of Columbia Code, 1940 edition); and said corporations shall have the power to be redevelopment companies under this Act and to acquire and hold real property for the purposes set forth in this Act and to exercise all other powers granted to redevelopment companies in this Act subject to the provisions, limitations, and obligations set forth in this Act.

(c) A redevelopment company, individual, or partnership to which any project area or part thereof is leased or sold under this Act shall keep books of account of its operations of or transactions relating to such area or part thereof entirely separate and distinct from its or his accounts of and for any other project area or part thereof or any other real property or enterprise; and no lien or other interest shall be placed upon any real property in said area to secure any indebtedness or obligation of the redevelopment company, individual, or partnership incurred for or in relation to any property or enterprise outside of said area.

MODIFICATIONS OF REDEVELOPMENT PLANS

SEC. 12. An approved project area redevelopment plan may be modified at any time or times: *Provided*, That any such modification as it may affect an area or part thereof which has been sold or leased shall not become effective without the consent in writing of the purchaser or lessee thereof: *Provided further*, That such modification may be effected only through adoption by the Planning Commission and subsequent submission to and approval by the District Commissioners, as hereinafter provided. Before approval, the District Commissioners shall hold a public hearing on the proposed modification, notice of the time and place of which shall be given by mail sent at least ten days prior to the hearing to the then owners of the real properties in the project area and of the real properties immediately adjoining or across the street from the project area. The District Commissioners may refer back to the Planning Commission any project area redevelopment plan, project area boundaries, or modification submitted to it, together with their recommendation for changes in such plan, boundaries, or modification, and, if such recommended changes be adopted by the Planning Commission and be in turn approved by the District Commissioners, the plan, boundaries, or modification as thus changed shall be and become the approved plan, boundaries, or modification.

LIMITATION UPON TAX EXEMPTION

SEC. 13. Nothing contained in this Act shall be construed to authorize or require the exemption of any real property from taxation.

No real property acquired by the Agency under this Act shall be exempt from taxation by reason of such acquisition or by reason of the holding thereof by the Agency; and, in the case of any piece of real property, which, under the project area redevelopment plan, is designated to be used for Federal or District or other tax-exempt uses, the exemption of such real property from taxation granted by or in the Act entitled "An Act to define the real property exempt from taxation in the District of Columbia (Public Law 846, Seventy-seventh Congress)", or other statute, shall not commence until title thereto shall have been transferred from the Agency to the United States or the District of Columbia or to a Federal or District public agency as provided in section 7 of this Act or sold or leased to a public redevelopment company or other public corporation or tax-exempt agency and may thereby become exempt from taxation by reason of the provisions of statutes other than this present Act; the intention being that ownership or operation by the Agency in the exercise of its power under this present Act shall not, in and of itself, produce tax exemption.

ADMINISTRATIVE EXPENDITURE AND EMPLOYMENT

SEC. 14. The Agency is hereby authorized and empowered—

(a) to procure services or make any purchase without regard to the provisions of section 3709 of the Revised Statutes, provided the aggregate amount involved is not more than $100;

(b) to secure planning, land economics and valuation services, and other expert services related to the acquisition and disposition of real property, by contract or otherwise, at rates of pay or fees not to exceed those usual for similar services elsewhere, and without regard to the Classification Act of 1923, and to section 3709 of Revised Statutes, as amended: *Provided*, That this exemption shall not apply to persons employed by the Agency on a permanent basis;

(c) to appoint and employ such officers and employees as it may find necessary for the proper performance of its duties under this Act and to prescribe their authorities, duties, responsibilities, and tenures and fix their compensations; such appointments and employments to be made in conformance with the civil-service laws and the Classification Act of 1923, as amended; and

(d) to make such expenditures, subject to audit under the general law, for the acquisition and maintenance of adequate vehicles, furnishings, equipment, supplies, books of reference, directories, periodicals, newspapers, printing and binding, and for such other expenses as may from time to time be found necessary for the proper administration of this Act.

ANNUAL REPORT

SEC. 15. On or before the last day of September of each year the Agency shall make an annual report to Congress of its operations and expenditures for the immediately preceding fiscal year, said report to include a financial balance sheet of its entire operations hereunder, and a recital in such particularity as is feasible of what the Agency proposes to do during the next succeeding fiscal year. The Agency

shall make such other and further reports, in such form and at such times as the Congress by concurrent resolution shall require.

APPROPRIATIONS AUTHORIZED

SEC. 16. (a) There is hereby authorized to be appropriated, out of any moneys in the Treasury of the United States not otherwise appropriated, whatever amounts are necessary to the Planning Commission, in addition to other funds which may be appropriated to it or private funds made available to it (the acceptance of which is hereby authorized), for the making or modification of a general or comprehensive plan and the making or modification of project area redevelopment plans and for surveys as authorized in this Act, and other administrative expenses in connection therewith. The Commission is also authorized to receive any grants that the Congress may appropriate for said purposes to the various States and municipalities and the District of Columbia.

(b) There is further authorized to be appropriated out of any moneys in the Treasury of the United States not otherwise appropriated, the sum of $20,000,000, which sum shall be placed to the credit of a special trust fund to be established for the purposes hereinafter set out. There shall be deposited in the Treasury of the United States and credited to said special trust fund all revenues, rentals, proceeds, and other funds received by the Agency. The said special trust fund is hereby made available to the Agency for the purpose of acquiring real property and performing any act required or authorized by this Act. The Agency shall from time to time submit to the District Commissioners estimates of amounts for the reasonable and necessary expenses of the Agency, including personal services, and such amounts as may be approved by the District Commissioners shall be available from the said special trust fund for such expenses.

(c) As of the last day of the tenth fiscal year beginning after approval of this Act, or as of such later date as may be fixed by the Congress, there shall be transferred and credited to miscellaneous receipts of the United States the balance in the said special trust fund after deducting (a) such amount as may be necessary for the completion of any approved project the acquisition of which has been begun and (b) such amount for operating expenses of the Agency for one year as may be approved by the District Commissioners. If the balance so transferred and credited be insufficient to reimburse the United States for appropriations made pursuant to paragraph (b) of this section, then an amount equal to 50 per centum of the deficit shall be payable to the United States from revenues of the District of Columbia in installments of equal amounts for each of ten years. The District Commissioners shall include in their annual estimates of appropriations items for the payment of such installments. The aforesaid deficit shall be determined by deducting from the total of said appropriations an amount equal to (a) the fund transferred and credited to miscellaneous receipts of the United States, (b) the cost to the Agency of the real property owned by it on said date, and (c) the reserve for completion of approved projects. All subsequent proceeds, revenues, and rentals from said real property shall be credited to the said special trust fund, to be disposed of as the Congress may direct.

ACQUISITION UNDER DISTRICT OF COLUMBIA ALLEY DWELLING ACT

SEC. 17. From and after the termination of the period of one year, beginning with the date of the approval of this Act, all authority granted by the Act known as the District of Columbia Alley Dwelling Act, approved June 12, 1934, as amended, to acquire, by purchase, condemnation, or gift, lands, buildings and structures, or any interest therein, is hereby transferred to and vested in the Agency created by this Act. During said one-year period said authority may be exercised by the National Capital Housing Authority only for projects that shall have been approved by the Planning Commission and the District Commissioners: *Provided, however*, That failure of the Planning Commission or the District Commissioners to approve or disapprove in writing within sixty days after the submission by the National Capital Housing Authority shall be equivalent to a formal approval. Nothing contained in said Alley Dwelling Act or in this Act shall be interpreted as precluding the inclusion at any time of any alley or inhabited alley or alley dwelling or dwelling or square containing an inhabited alley in a project area to be planned, acquired, and disposed of under the provisions of this Act. Any real property acquired by the Agency under the authority of the Alley Dwelling Act may be transferred or may be sold or leased by the Agency as provided in this Act for real property acquired for a project area redevelopment. The National Capital Housing Authority is hereby declared to be a redevelopment company and is hereby granted the power to purchase or lease redevelopment areas or parts thereof from the Agency in accordance with the provisions of this Act. The National Capital Housing Authority shall keep regular books of account in accordance with standard auditing practices, covering all properties operated by it, showing detailed construction costs, management costs, repairs, maintenance, other operating costs, rents, subsidies, grants, allowances and exemptions; such books shall be subject to annual audit by the General Accounting Office; and the annual report of the National Capital Housing Authority shall include a summary of all transactions covered by such books and shall be made available to the public upon request.

AMENDMENT TO DISTRICT OF COLUMBIA ALLEY DWELLING ACT

SEC. 18. (a) Section 4 (b) of the Act known as the "District of Columbia Alley Dwelling Act", approved June 12, 1934, as amended, is further amended to read as follows:

"(b) On and after July 1, 1955, it shall be unlawful to use or occupy any alley building or structure as a dwelling in the District of Columbia."

(b) Section 6 of such Act, as amended, is further amended by striking "1947" and inserting in lieu thereof "1955".

ENCOURAGEMENT AND AID TO PRIVATE LENDING INSTITUTIONS

SEC. 19. (a) To provide for and to facilitate the improvement of housing and other improved real estate in the District of Columbia, Federal savings and loan associations of the District of Columbia and building associations and building and loan associations operating under the laws of the District of Columbia are authorized, notwith-

standing any other provision of law, to make loans for the improvement of homes or other improved real estate in the District of Columbia without security: *Provided*, That no such loan without security shall be made in a sum in excess of $2,000.

(b) Any financial institution or other lending organization operating under the laws of the United States or the District of Columbia is authorized, notwithstanding any other law or regulation, to make loans to redevelopment corporations to finance the improvement of any project area as provided in this Act. Any life-insurance company organized under the laws of the District or formed or organized under an Act of Congress is authorized, notwithstanding any other provision of law, to make loans or advances for the purpose of making repairs, alterations, additions, or improvements to homes or other buildings on improved real estate upon which it then holds a first lien to secure a loan previously made, without additional security: *Provided*, That no such loan or advance shall be made in a sum in excess of $2,000: *And provided further*, That the amount of such loan or advance when added to the balance due on the original indebtedness shall not exceed the amount originally secured by the first lien.

EFFECT UPON EXISTING STATUTES

SEC. 20. (a) In the making and approval of project area redevelopment plans, the Planning Commission and the District Commissioners shall not be limited or bound by the provisions of sections 7–108, 7–117, 7–122, and 7–301 of the District of Columbia Code (1940 edition) (Act of March 2, 1893, 27 Stat. 532, ch. 197, sec. 1; Act of May 31, 1900, 31 Stat. 248, ch. 599, sec. 2; Act of March 4, 1913, 37 Stat. 949, ch. 150; Act of March 3, 1901, 31 Stat. 1429, ch. 854, sec. 1608, as amended) relating to width, location, and length of streets and highways. No department, instrumentality, agency, or official of the Federal Government or of the District of Columbia shall have any power to release or modify or depart from any feature or detail of an approved redevelopment plan or part thereof unless such release, modification, or departure be adopted by the Planning Commission and approved by the District Commissioners in accordance with the provisions of section 12 of this Act or unless the modification or departure be approved by Act of Congress.

(b) Any power granted the District Commissioners or any District or Federal agency by the District of Columbia Code or by any statute may, in addition to the purposes now specified, be exercised in furtherance of the protection or carrying out of any redevelopment plan or modification made and approved under this Act.

SEPARABILITY OF PROVISIONS

SEC. 21. If any provisions of this Act or the application thereof to any body, agency, situation, or circumstances be held invalid, the remainder of the Act and the application of such provision to other bodies, agencies, situations, or circumstances shall not be affected thereby.

SEC. 22. This Act shall take effect ninety days after the date of its approval.

Approved August 2, 1946.

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INDEX

	Page
A. Summary of the facts and the proceedings below	1
B. Even though the judgment of dismissal is correct the basis upon which the conclusion is reached is partially erroneous and would impose unwarranted limitations upon the exercise of the power of eminent domain	6
C. It is important that this Court finally determine the issue presented	8
Conclusion	9

CITATIONS

Cases:

Burt v. *City of Pittsburgh*, 340 U.S. 802	8
Foeller v. *Housing Authority of Portland*, 256 P. 2d 752 (Ore. 1953)	8
Hunter v. *Norfolk Redevelopment and Housing Authority*, 78 S.E. 2d 893 (Va. 1953)	8
New York City Housing Authority v. *Muller*, 270 N.Y. 333	7
United States ex rel T.V.A. v. *Welch*, 327 U.S. 546	4, 6

Statutes:

District of Columbia Redevelopment Act of August 2, 1946, 60 Stat. 790	1
Sec. 2	2
Sec. 5(a)	2
Sec. 7	3
Housing Act of 1949, Act of July 15, 1949, 63 Stat. 413:	
Sec. 2, 42 U.S.C., Supp. V, 1441	9
Sec. 105, 42 U.S.C., Supp. V, 1454	9

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In the Supreme Court of the United States

OCTOBER TERM, 1954

SAMUEL BERMAN AND SOLOMON H. FELDMAN, EXECUTORS OF THE ESTATE OF MAX R. MORRIS, DECEASED, APPELLANTS

v.

ANDREW PARKER, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

BRIEF FOR THE DISTRICT OF COLUMBIA REDEVELOPMENT LAND AGENCY AND NATIONAL CAPITAL PLANNING COMMISSION

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In the Supreme Court of the United States

OCTOBER TERM, 1953

No. — 550

MAX R. MORRIS, APPELLANT

v.

ANDREW PARKER, ET AL., APPELLEES

MEMORANDUM STATING POSITION OF APPELLEES

The judgment in this case is favorable to appellees in that the three-judge district court has held that the District of Columbia Redevelopment Act of August 2, 1946, 60 Stat. 790, is constitutional and has dismissed appellant's complaint seeking to enjoin further action pursuant to the Act. However for reasons to be stated herein, it is believed that probable jurisdiction should be noted and the case heard upon the merits.

A. *Summary of the facts and the proceedings below:*

The purposes of the Redevelopment Act are briefly summarized in its title as follows: "To provide for the replanning and rebuilding of slum,

blighted, and other areas of the District of Columbia and the assembly, by purchase or condemnation, of real property in such areas and the sale or lease thereof for the redevelopment of such area in accordance with said plans; and to provide for the organization of, procedure for, and financing of such planning, acquisition, and sale or lease, and for other purposes." In section 2, Congress stated at length the reasons requiring the legislation and the purposes sought to be accomplished thereby.

Project Area B here involved is the first project undertaken under the Act. It encompasses an area of some 76 acres bounded by South Capitol Street, Eye Street, Fourth Street and E Street in the southwest section in which 57% of the dwellings depended on outside toilets, 60% had no baths, 82% no wash basins or laundry tubs, 29% no electricity and 83% no central heating. A survey showed 64% of the dwellings were beyond repair and 18% needed major repairs. Statistics showed a much higher death rate for the area than the District of Columbia generally.

The plan for redevelopment of the project area which was approved by the National Capital Planning Commission,[1] and, after public hearing, by the Board of Commissioners of the District of Columbia, was certified to the District of Columbia Redevelopment Land Agency for execution as provided in the Act. Preliminary steps for this purpose have been taken by the Land Agency.

[1] Formerly the National Capital Park and Planning Commission

The redevelopment plan allocates use of the land for various purposes such as residential, first commercial, second commercial, public uses, expressway and streets, with detailed provisions as to types of dwelling units, etc., at least one-third being low-rent housing with a maximum rental of $17.00 per room per month. Negotiations are being had for the lease or purchase of parts of the area by private firms as provided in the Act (section 7) which requires *inter alia*, that any sale or lease shall provide that the lessee or purchaser shall carry out, or cause to be carried out, the approved redevelopment plan.

Section 5(a) of the Act grants to the Land Agency "the power to further the redevelopment of blighted territory in the District of Columbia and the prevention, reduction, or elimination of blighting factors or causes of blight and for that purpose to acquire and assemble real property by purchase, exchange, gift, dedication or *eminent domain* * * * ," (Emphasis added).

Appellant, the owner of a department store located within Project Area B, instituted this suit for a temporary and permanent injunction against a taking of his property on the ground that the Redevelopment Act is unconstitutional in itself and as implemented by the plan for Project Area B, and that as applied to appellant's property the plan is void. A motion to dissolve the three-judge court having been denied, it considered the issues upon motion to dismiss or for summary judgment and entered judgment dismissing the complaint.

After summarizing the provisions of the statute, the actions taken thereunder and the facts in relation to Project Area B, the opinion of the court held that the power to acquire by eminent domain property to be used for streets, recreation centers, parks and other public uses was clear; as was the power to acquire real estate for the construction of low-cost housing. It then stated that the "problem concerns the remainder of the property in the area, which is acquired by eminent domain and sold or leased to private persons for private uses, with the provision that not less than one-third of the housing accommodations to be built on the property are to be for low-rent housing". The court then determined that the instant plan is not "a low-rent housing project" and overruled appellant's objection that the Act did not apply to commercial properties.

The opinion then discusses at length several decisions of this Court relating to the scope of the power of eminent domain including *United States ex rel T.V.A. v. Welch*, 327 U.S. 546, and concludes that the problem lies in three parts, which are then separately considered. Under the heading "I" it sustains the authority to condemn buildings which constitute a slum. In "II" it separately considers the title to land upon which such buildings are situated, states that title to real estate cannot be taken merely because a slum now exists on the land and holds that such title may be taken only if clearance of the slum is impracticable without taking title to the land or if proposed restrictions which

can be imposed only through the medium of resale "are fairly calculated to prevent recurrence of slum conditions". Under the heading "III" it discusses the problem of an area which is not a slum but is "blighted" and out of date. This discussion is again subdivided into two parts: first, where the plan is to develop an area in which no slums exist and, second, an area upon part of which slums exist. The first of these categories is discussed on the hypothesis that the area is backward, stagnant, anything except detrimental to health, safety or morals, and concludes that Congress has no power to authorize the seizure by eminent domain for the sole purpose of redeveloping the area according to its, or its agent's, judgment of what a well-developed, well-balanced neighborhood would be. In connection with the second category recent federal and state court decisions relating to redevelopment programs are discussed, as well as the plan for Project Area B, and the court concludes that its purposes, in addition to the elimination of slum conditions, is to create a pleasant neighborhood. The opinion concludes—

> We hold that Congress did not in the Redevelopment Act confer power to seize property beyond the reasonable necessities of slum clearance and prevention, the word "slum" meaning conditions injurious to the public health, safety, morals and welfare.
>
> If property is seized for the purpose of eliminating or preventing slums within the

limitations and in accordance with the rules we have described, the fact that it may be sold subsequently to private persons does not vitiate the validity of the seizure.

B. *Even though the judgment of dismissal is correct the basis upon which the conclusion is reached is partially erroneous and imposes unwarranted limitations upon the exercise of the power of eminent domain:* In *United States ex rel T.V.A.* v. *Welch*, 327 U.S. 546, this Court, speaking of the Circuit Court of Appeals, said (p. 551): "It first analyzed the facts by segregating the total problem into distinct parts and, thus, came to the conclusion that T.V.A.'s purpose in condemning the land in question was only one to reduce its liability arising from the destruction of the highway". Here, as the summary, *supra*, makes clear, the district court has gone much further in attempting to treat separately various aspects of the total problem, even to the extent of holding that the authority to condemn land upon which a building rests is more limited than the power to condemn the building. In the *Welch* case this Court said (pp. 552-553): "In passing upon the authority of the T.V.A. we would do violence to fact were we to break one inseparable transaction into separate units. We view the entire transaction as a single integrated effort on the part of T.V.A. to carry on its congressionally authorized functions." Similarly, the Redevelopment Act clearly contemplated execution of its purposes in terms of a project area rather than in terms of particular lots or particular

buildings or in terms of the various uses to which parts of the area will be put under the plan.[2]

A piecemeal approach to this problem which leaves isolated structures in the hands of recalcitrant owners and thus prevents the assembly of all the land in the area would seriously impair, if not frustrate, the purposes of the program. This is so because many factors—such as haphazard and mixed land uses, overcrowding of the land, outmoded street patterns, lack of light, air and living space, inadequate room for necessary community facilities, deterioration of neighborhoods and growing dilapidation of all structures—combine to produce a slum or blighted area. A complete reorganization of the area is necessary in order to eradicate these various causes of the evil. Compare *New York City Housing Authority* v. *Muller*, 270 N.Y. 333, 341, where the court said: "the evil inheres not so much in this or that individual structure as in the character of a whole neighborhood of dilapidated and unsanitary structures."

Moreover, a detailed consideration of the decision below shows that the limitations and rules which the decision prescribes upon the exercise of the power of eminent domain constitute, in many respects, an unwarranted invasion of the discretion which Congress has vested in the National

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[2] An affidavit of Dr. Daniel L. Seckinger, Director of Public Health for the District of Columbia, discusses the health problems of the area and the effect on the progam of a failure to redevelop this area completely by excluding even a relatively few buildings.

Capital Planning Commission, the Land Agency and the Commissioners of the District of Columbia.

In short, appellees take the position that the Redevelopment Act is constitutional and that the plan for Project Area B is a proper exercise of the authority granted therein but is not subject to the limitations imposed by the decision below.

C. It is important that this Court finally determine the issue presented: The decision of the court below raises substantial questions as to the constitutionality of the Act even though it sustains the Act. The importance of a definitive settlement of these questions in the execution of the plan as to Project Area B, which is just now in the preliminary stages of physical development is, we believe, obvious. And beyond that, the limitations of the decision may substantially affect the actions of the various agencies involved in the formulation of plans for other project areas in their attempt to solve this serious problem of the Nation's Capital.

The question is also one of national importance. Similar redevelopment programs have been adopted in some thirty-two states and have been sustained in some thirteen states against attacks based primarily on the fact that after the land in the area is assembled it may be sold or leased to private developers. The only contrary decisions are in Florida and Georgia. See cases collected in *Foeller* v. *Housing Authority of Portland*, 256 P.2d 752 (Ore. 1953), and in *Hunter* v. *Norfolk Redevelopment and Housing Authority*, 78 S.E. 2d 893 (Va. 1953). In *Burt* v. *City of Pittsburgh*, 340

U.S. 862, this Court affirmed upon motion the judgment of a three-judge federal court sustaining a similar redevelopment project in Pittsburgh, Pennsylvania. The national interest in such programs has been recognized by Congress in the Housing Act of 1949, Act of July 15, 1949, sec. 2, 63 Stat. 413, 42 U.S.C., Supp. V, 1441 *et seq.* which provides, *inter alia*, for the encouragement of such developments and for the furnishing of financial assistance in the execution of redevelopment plans subject to conditions similar to those of the District of Columbia Redevelopment Act. See section 105, 42 U.S.C., Supp. V, 1454. Large appropriations have been made for these purposes. A decision of this Court as to the constitutionality of the District of Columbia Act will thus have an important bearing upon the nationwide program.

CONCLUSION

For the foregoing reasons it is submitted that probable jurisdiction should be noted and this case heard upon the merits.

Respectfully submitted,

ROBERT L. STERN,
Acting Solicitor General, Counsel for Appellees, The District of Columbia Redevelopment Land Agency, and National Capital Planning Commission.

JANUARY, 1954.

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INDEX

	Page
Opinion below	1
Jurisdiction	1
Questions presented	2
Statute involved	2
Statement	3
1. The District of Columbia Redevelopment Act	3
2. The Redevelopment Plan for Project Area B	7
3. The proceedings in the present case	8
Summary of argument	10
Argument	16
The District of Columbia Redevelopment Act is constitutional	18
A. Congress has general power to promote the public health, safety, morals, and welfare of the District of Columbia by eliminating and preventing slums, and to use eminent domain for that purpose	19
B. The fact that portions of the condemned property will be leased or sold to private developers does not prevent acquisition of the land	25
C. Congress could validly authorize the execution of the redevelopment program on an area basis, including the taking of nondeteriorated commercial property	30
1. There is adequate support for the Congressional view that area planning is appropriate and essential to attain the goals of slum clearance and slum prevention	32

Argument—Continued
The District of Columbia, etc.—Continued
C. Congress could validly, etc.—Continued
Page
2. Commercial property may be taken as part of the execution of the area plan 40
3. The fee title to the land may normally be taken 42
4. The condemned area need not be limited to the existing slums ... 43
D. The legislative and administrative determination of the necessity or desirability of taking property for redevelopment purposes is rarely, if ever, subject to overturn by the courts 47
E. The Act properly states the purposes of the acquisition and delegates to the administrative authorities the details of selection of particular properties to be acquired to serve those aims 54
Conclusion 58

CITATIONS

Cases:

Adams v. *Housing Authority of City of Daytona Beach*, 60 So. 2d 663 17
Adirondack Railway v. *New York State*, 176 U. S. 335 52
Ajootian v. *Providence Redevelopment Agency*, 91 A. 2d 21 17
Atlantic Cleaners & Dyers v. *United States*, 286 U. S. 427 19
Barnidge v. *United States*, 101 F. 2d 295 23
Belovsky v. *Redevelopment Authority*, 357 Pa. 329, 54 A. 2d 277 ..... 17, 29, 57
Boom Co. v. *Patterson*, 98 U. S. 403 48
Bragg v. *Weaver*, 251 U. S. 57 ..... 48, 52
Brown v. *United States*, 263 U. S. 78 ..... 12, 26
Burt v. *Pittsburgh*, 340 U. S. 802 47
Chappell v. *United States*, 160 U. S. 499 22

Cases—Continued Page

Cherokee Nation v. *Kansas Railway Co.*, 135 U. S. 641 22

Chicago Land Clearance Comm. v. *White*, 411 Ill. 310, 104 N. E. 2d 236 ..... 17, 30

Cincinnati Soap Co. v. *United States*, 301 U. S. 308 56

City of Oakland v. *United States*, 124 F. 2d 959, certiorari denied, 316 U. S. 679 23

Cleveland v. *United States*, 323 U. S. 329 20

Crommett v. *City of Portland*, Sup. Jud. Ct. of Maine, decided Sept. 3, 1954 ..... 17, 29, 57

District of Columbia v. *Thompson Co.*, 346 U. S. 100 19

Fahey v. *Mallonee*, 332 U. S. 245 ..... 16, 57

Foeller v. *Housing Authority of Portland*, 198 Or. 205, 256 P. 2d 752 ..... 10, 17, 29, 38, 43

General Development Corp. v. *City of Detroit*, 322 Mich. 495, 33 N. W. 2d 919 17

Gohld Realty Co. v. *City of Hartford*, 104 A. 2d 365 ..... 17, 30, 39, 57

Hanson Co. v. *United States*, 261 U. S. 581 ..... 11, 12

Herzinger v. *Mayor & City Council of Baltimore*, 203 Md. 49, 98 A. 2d 87 ..... 17, 24, 39, 57

Highland v. *Russell Car Co.*, 279 U. S. 253 ..... 12, 27

In re Housing Authority, 233 N. C. 649, 65 S. E. 2d 761 39

Housing Authority of the City of Atlanta v. *Johnson*, 209 Ga. 560, 74 S. E. 2d 891 17

Hunter v. *Norfolk Redevelopment & Housing Authority*, 195 Va. 326, 78 S. E. 2d 893 ..... 17, 39

In re Edward J. Jeffries Homes Housing Project, 306 Mich. 638, 11 N. W. 2d 272 ..... 17, 39

Joslin Co. v. *Providence*, 262 U. S. 668 ..... 48, 52

Kaskel v. *Impelliteri*, 306 N. Y. 73, 115 N. E. 2d 659 ..... 17, 39, 54, 57

Keyes v. *United States*, 119 F. 2d 444, certiorari denied, 314 U. S. 636 24

Kohl v. *United States*, 91 U. S. 367 22

Cases—Continued

Page

Land Clearance for Redevelopment Authority v. *City of St. Louis*, 270 S. W. 2d 58 ..... 17, 30
Lichter v. *United States*, 334 U. S. 742 ..... 16, 57
Luxton v. *North River Bridge Co.*, 153 U. S. 525 ..... 11, 12, 22, 27, 28
Murray v. *La Guardia*, 291 N. Y. 320, 52 N. E. 2d 884, certiorari denied, 321 U. S. 771 17
Nashville Housing Authority v. *City of Nashville*, 192 Tenn. 103, 237 S. W. 2d 946 17
Matter of N. Y. City H. Authority v. *Muller*, 270 N. Y. 333, 1 N. E. 2d 153 ..... 13, 17, 38
Old Dominion Co. v. *United States*, 269 U. S. 55 ..... 23, 49
Oliver v. *City of Clairton*, 374 Pa. 333, 98 A. 2d 47 39
Opinion of the Justices, 254 Ala. 343, 48 So. 2d 737 17
Opinion to the Governor, 76 R. I. 249, 69 A. 2d 531 17
People ex rel Gutknecht v. *City of Chicago*, 414 Ill. 600, 111 N. E. 2d 626 17
Polson Logging Co. v. *United States*, 160 F. 2d 712 55
Redevelopment Agency of City and County of San Francisco, 266 P. 2d 105 17
Redfern v. *Board of Commissioners of Jersey City*, 137 N. J. L. 356, 59 A. 2d 641 17
Rindge Co. v. *Los Angeles*, 262 U. S. 700 ..... 48, 49, 52
Rowe v. *Housing Authority*, 220 Ark. 698, 249 S. W. 2d 551 ..... 17, 29
Schecter Corp. v. *United States*, 295 U. S. 495 55
Schenck v. *City of Pittsburgh*, 364 Pa. 31, 70 A. 2d 612 17
Sears v. *City of Akron*, 246 U. S. 242 48
Shoemaker v. *United States*, 147 U. S. 282 ..... 49, 52
Simmonds v. *United States*, 199 F. 2d 305 49
In re Slum Clearance in City of Detroit, 331 Mich. 714, 50 N. W. 2d 340 17
State ex rel Bruestle, City Solicitor v. *Rich*, 159 Ohio St. 13, 110 N. E. 2d 778 ..... 17, 39, 43

Cases—Continued

Page

State on Inf. of Dalton v. *Land Clearance for Redevelopment Authority*, 270 S. W. 2d 44 ..... 17, 29, 39, 43, 57

Stockus v. *Boston Housing Authority*, 304 Mass. 567, 24 N. E. 2d 333 39

Sweet v. *Rechel*, 159 U. S. 380 49

United States v. *Advertising Checking Bureau*, 204 F. 2d 770 ..... 22, 55

United States v. *Carmack*, 329 U. S. 230 ..... 49, 52

United States v. *Certain Interests in Land Situate in Franklin County, Ill.*, 58 F. Supp. 739 27

United States v. *Dieckmann*, 101 F. 2d 421 56

United States v. *Gettysburg Electric Ry.*, 160 U. S. 668 ..... 22, 25, 49

United States v. *Kansas City, Kan.*, 159 F. 2d 125 49

United States v. *Marin*, 136 F. 2d 388 27

United States v. *Merchants Transfer & Storage Co.*, 144 F. 2d 324 ..... 51, 53

United States v. *Meyer*, 113 F. 2d 387, certiorari denied, 311 U. S. 706 49

United States v. *Miller*, 317 U. S. 369 26

United States v. *State of New York*, 160 F. 2d 479, certiorari denied, 331 U. S. 832 49

United States v. *State of South Dakota*, 212 F. 2d 14 49

United States v. *Threlkeld*, 72 F. 2d 464, certiorari denied, 293 U. S. 620 55

United States v. *Willis*, 211 F. 2d 1, certiorari denied, 347 U. S. 1015 ..... 51, 53

United States ex rel. T. V. A. v. *Welch*, 327 U. S. 546 ..... 11, 23, 26, 40, 47, 48

United States v. *6.74 Acres of Land in Dade County, Florida*, 148 F. 2d 618 49

United States v. *15.38 Acres of Land in New Castle County*, 61 F. Supp. 937 27

United States v. *40.75 Acres of Land*, 76 F. Supp. 239 ..... 51, 54

United States v. *243.22 Acres of Land*, 129 F. 2d 678, certiorari denied, 317 U. S. 698 26

Cases—Continued Page
United States v. *43,355 Square Feet of Land in King County, Wash.*, 51 F. Supp. 905 53
Velishka v. *City of Nashua*, 106 A. 2d 571 .. 17, 30, 39, 57
Woodville v. *United States*, 152 F. 2d 735, certiorari denied, 328 U. S. 842 26
Zurn v. *City of Chicago*, 389 Ill. 114, 59 N. E. 2d 18 17
Statutes:
District of Columbia Code:
Sec. 1-1002 5
District of Columbia Redevelopment Act of 1945, Act of August 2, 1946, c.736, 60 Stat. 790, D. C. Code secs. 5-701 to 5-719 ..... 2, 3
Sec. 2 ..... 3, 15, 23, 31, 56
Sec. 3 ..... 30, 41, 56
Sec. 4 5
Sec. 5 ..... 41, 56
Sec. 6 ..... 5, 31, 50, 52, 56
Sec. 7 ..... 6, 28, 56
Sec. 11 ..... 6, 56
General Condemnation Act of August 1, 1888, 25 Stat. 357, 40 U. S. C. 257 ..... 11, 22, 55
Housing Act of 1937, Act of September 1, 1937, 50 Stat. 888, 42 U. S. C. 1401 ..... 20, 32
Housing Act of 1949, Act of July 15, 1949, 63 Stat. 413, 42 U. S. C. 1441 ..... 6, 20, 33, 34
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Miscellaneous:
Brown, *Urban Redevelopment*, (1949) 29 Boston Univ. L. Rev. 318 21
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H. Doc. No. 306, 83d Cong., 2d sess 35
H. Rept. No. 2465, 79th Cong., 2d sess 20
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Mandelker, *Public Purpose in Urban Redevelopment*, (1953) 28 Tulane L. Rev. 69 21

Miscellaneous—Continued

Page

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Riesenfield and Eastlund, *Public Aid to Housing and Land Redevelopment*, (1950) 34 Minn. L. Rev. 610 ..... 21, 24

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S. Rept. No. 591, 79th Cong., 1st sess 19, 50

S. Rept. No. 1472, 83d Cong., 2d sess 36

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Urban Redevelopment: Problems and Practices (1953 ed.) 21

In the Supreme Court of the United States

OCTOBER TERM, 1954

No. 22

SAMUEL BERMAN AND SOLOMON H. FELDMAN, EXECUTORS OF THE ESTATE OF MAX R. MORRIS, DECEASED, APPELLANTS

v.

ANDREW PARKER, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

BRIEF FOR THE DISTRICT OF COLUMBIA REDEVELOPMENT LAND AGENCY AND NATIONAL CAPITAL PLANNING COMMISSION

OPINION BELOW

The opinion of the three-judge district court is reported at 117 F. Supp. 705, *sub nom. Schneider* v. *District of Columbia* (R. 45–73).

JURISDICTION

The judgment of the district court was entered November 20, 1953 (R. 83). The appeal was

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allowed December 21, 1953 (R. 84). The jurisdiction of this Court is invoked under 28 U. S. C. 1253. Probable jurisdiction was noted on March 8, 1954 (R. 89).

QUESTIONS PRESENTED

1. Whether Congress has power to authorize the use of eminent domain in the acquisition of real property for the execution of the District of Columbia Redevelopment Act, the purpose of which is to promote the public health, safety, morals, and welfare of the District of Columbia by eliminating and preventing slum and substandard housing conditions.

2. Whether the Redevelopment Act can validly provide for sale or lease of condemned property to private persons.

3. Whether Congress properly authorized the execution of the redevelopment program on an area basis to include any property, residential or commercial, necessary to eliminate the slum problem in the area, rather than authorizing the program on an individual structure basis.

4. Whether in the enactment of the Redevelopment Act Congress properly delegated authority to administrative officials for the selection of property to be acquired in carrying out the purpose of the Act.

STATUTE INVOLVED

The District of Columbia Redevelopment Act of 1945, Act of August 2, 1946, c. 736, 60 Stat. 790,

D. C. Code secs. 5–701 to 5–719, is set out in the Appendix to the Appellants' brief.

STATEMENT

This is an appeal from a judgment of a three-judge district court dismissing a complaint seeking to enjoin the condemnation of appellants' property under the District of Columbia Redevelopment Act of 1945, Act of August 2, 1946, 60 Stat. 790, ch. 736, D. C. Code secs. 5–701 to 5–719, on the ground that the statute is unconstitutional generally, and also as applied to appellants' particular property. The district court sustained the constitutionality of the Act. The statutory provisions, the administrative actions, and the facts of the case basic to the present controversy may be summarized as follows:

1. *The District of Columbia Redevelopment Act.*—Section 2 of the Act sets out in detail the circumstances requiring enactment of the legislation and the purposes sought to be accomplished. It states: "It is hereby declared to be a matter of legislative determination that owing to technological and sociological changes, obsolete lay-out, and other factors, conditions existing in the District of Columbia with respect to substandard housing and blighted areas, including the use of buildings in alleys as dwellings for human habitation, are injurious to the public health, safety, morals, and welfare; and it is hereby declared to be the policy of the United States to protect and

promote the welfare of the inhabitants of the seat of the Government by eliminating all such injurious conditions by employing all means necessary and appropriate for the purpose; * * *." Congress then declared that control by regulatory processes had proved inadequate and that in its judgment it was necessary to acquire property "by gift, purchase, or the use of eminent domain to effectuate the declared policy by the discontinuance of the use for human habitation in the District of Columbia of substandard dwellings and of buildings in alleys and blighted areas, and thereby to eliminate the substandard housing conditions and the communities in the inhabited alleys and blighted areas in such District; and it is necessary to modernize the planning and development of such portions of such District."

Congress further found that these purposes could not be accomplished by private enterprise alone, without public participation in the planning and financing of land assembly. It also determined that for economic soundness of the redevelopment, accomplishment of the necessary social and economic benefits, and because of the relationship of an urban area to other parts, sound redevelopment must be done in the light of comprehensive planning for the District of Columbia and its environs. The Section concludes that "the acquisition and the assembly of real property and the leasing or sale thereof for redevelopment pursuant to a project area redevelopment plan, all as

provided in this Act, is hereby declared to be a public use."

Section 4 establishes the District of Columbia Redevelopment Land Agency composed of five members, two to be appointed by the President and three by the District Commissioners, subject to confirmation by the Senate. The Agency is granted the power, among others, "to further the redevelopment of blighted territory in the District of Columbia and the prevention, reduction, or elimination of blighting factors or causes of blight and for that purpose to acquire and assemble real property by purchase, exchange, gift, dedication, or eminent domain, * * *" (Section 5).

Section 6 (a) provides that the National Capital Planning Commission[1] (the "Planning Commission") shall develop a comprehensive plan for the District of Columbia. Preparation and adoption of a redevelopment plan for a particular

[1] Formerly the National Capital Park and Planning Commission. Its membership consists of the Chief of Engineers of the Army, the Engineer Commissioner of the District of Columbia, the Director of the National Park Service, the Commissioner of Public Buildings, the Commissioner of Public Roads, the chairmen of the committees on the District of Columbia of the Senate and the House of Representatives, and, in addition, five eminent citizens well qualified and experienced in city or regional planning, to be appointed by the President, at least two of whom shall be bona fide residents of the District of Columbia or the environs, including one of such residents who shall be appointed from among not less than three nominees of the Board of Commissioners of the District of Columbia. D. C. Code, sec. 1–1002.

project area are provided for under procedures to be described later (*infra*, pp. 6, 7–8).

After the real property in a project area has been assembled, the Agency is authorized to transfer to the appropriate bodies those parcels which are to be used for public purposes such as streets, utilities, public buildings, recreational spaces and schools (Sec. 7 (a)). The remainder of the area is to be sold or leased, either as an entirety or in separate parts, to a redevelopment company or to individuals (Sec. 7 (b)). Preference is to be given in this regard to private enterprise over any public redevelopment company, consistently with the public interest and the purposes of the Act (Sec. 7 (g)). Section 7 (d) requires that every sale or lease provide for carrying out the redevelopment plan and "that no use shall be made of any land or real property included in the lease or sale nor any building or structure erected thereon which does not conform to such approved plan or approved modifications thereof." The Agency is authorized to include other provisions to assure conformance to the plan "including provisions whereby the obligations to carry out and conform to the project area plan shall run with the land." Section 11 contains further provisions for protection of the plan, particularly with reference to corporate matters.

The Housing Act of 1949, Act of July 15, 1949, 63 Stat. 413, 42 U. S. C. 1441 *et seq.*, providing for federal assistance to local redevelopment pro-

grams throughout the country, contains amendments to the District of Columbia Redevelopment Act so as to enable the District agencies to secure the benefits of the national program. The Housing Act of 1954, Act of August 2, 1954, c. 649, 68 Stat. 590, contains further amendments for the same purpose.

2. *The Redevelopment Plan for Project Area B.*—This case relates to Project Area B, the first project undertaken under the Act. A comprehensive plan for the District of Columbia and its environs was prepared and published by the Planning Commission in 1950 (R. 16). After the completion of various other preliminary steps, the Planning Commission adopted a plan for the Southwest Redevelopment Area and for Area B as the first portion of that larger area to be redeveloped.[2] A survey of Area B showed that 64.3% of the dwellings in the area were beyond repair, 18.4% needed some major repairs, and only 17.3% could be considered satisfactory. It further appeared that 57.8% of the dwellings depended upon outside toilets, 60.3% had no baths, 29.3% had no electricity, 82.2% had no wash basin or laundry tubs and 83.8% had no central heating. The population of the area was 5012, of which 97.5% was Negro. (R. 20.) The record contains an affidavit by Dr. Seckinger, Director of Health for

[2] Submitted herewith as a separate appendix are the resolutions of the Planning Commission to which are attached the plan and supporting documents.

the District of Columbia, describing the conditions in the area and stating that from a public health standpoint it is necessary to redevelop and rebuild the area in question (R. 10–14A, 43–44).

The plan specified the boundaries of Area B by metes and bounds, and allocated the use to be made of the land for various purposes such as residential, first commercial, second commercial, public uses, expressway and streets, with detailed provisions as to types of dwelling units, etc., at least one-third being low-rent housing with a maximum rental of $17.00 per room per month (R. 18–20, 22–26, 33–37; see also, the separate appendix).

The Commissioners of the District of Columbia held a public hearing after published notice and on December 30, 1952, approved the plan which was thereafter certified to the Redevelopment Agency for execution (R. 21). The Agency obtained funds and took steps preliminary to sale or leasing of the area to a redeveloper (R. 21–23, 33).

3. *The proceedings in the present case.*—The complaint alleged that Max Morris[3] owned property at 712 Fourth Street S. W., which was improved by a department store and was not used as a dwelling, residence, house or habitation; and that defendants were proceeding or threatening to proceed to take the property under the redevelopment plan. The Act was asserted to be unconstitutional because it authorized the taking of pri-

[3] Appellants have been substituted because of the death of Max Morris while this appeal was pending (R. 87).

vate property for private use. The administrative actions were alleged to amount to a taking without due process of law because they authorized the taking of plaintiff's private commercial property for private use, and, alternatively, it was alleged that the threatened taking was not authorized by the statute in certain particulars (R. 1–4). The relief sought was an injunction against the taking of plaintiff's property, a judgment declaring the Act to be unconstitutional, a judgment declaring the Act as implemented by the plan to be unconstitutional as to the plaintiff, and other relief (R. 4–5).

A three-judge court was constituted and a motion to dissolve that court was denied (R. 6–7, 41). Appellees moved to dismiss or in the alternative for summary judgment, attaching affidavits showing the facts outlined above (R. 8–44). As already stated, there was included the affidavit of Dr. Daniel L. Séckinger, describing health conditions in Area B, giving statistics as to the death rate because of certain diseases, and stating the reasons for his opinion that failure to redevelop this area completely by exclusion of relatively few buildings would do much to nullify the effectiveness of the redevelopment program (R. 10–13, 43–44). The district court filed a lengthy opinion concluding that if the property is seized for the purpose of eliminating or preventing slums "within the limitations and in accordance with the rules we have described, the fact that it may

be sold subsequently to private persons does not vitiate the alidity of the seizure" (R. 45–76). Judgment of dismissal was accordingly entered and this appeal followed (R. 83–85).

SUMMARY OF ARGUMENT

Although it upheld the District of Columbia Redevelopment Act against appellants' initial challenge, the three-judge district court declared and suggested severe limitations which we believe to be unwarranted and which have not been adopted by the highest courts of the seventeen states which have sustained comparable redevelopment legislation. See, e. g., *Foeller* v. *Housing Authority of Portland*, 198 Or. 205, 256 P. 2d 752. In supporting the constitutionality of the Act, we shall discuss the lower court's restrictions as well as answer the appellants' original attack.

A

1. Since Congress is both the national and the local legislature for the District of Columbia, it clearly has general power to promote the health, safety, morals, and welfare of the inhabitants of the seat of the Government by striving to eliminate and prevent slums and slum-breeding conditions. This legislative purpose is universally accepted today as a valid one, and it is also plain that there is a close causal relationship between substandard housing and blighted areas and the growth of slum conditions, with all the injurious

consequences they bring in their train. In the national field, Congress has recognized the need for area redevelopment programs in the Housing Acts of 1949 and 1954; thirty-four states and four territories have enacted redevelopment legislation comparable to the District of Columbia Act.

2. The power of eminent domain, involved here, may be utilized by Congress whenever it is necessary to acquire property in the execution of a proper federal purpose. Cf. General Condemnation Act of August 1, 1888, 25 Stat. 357, 40 U. S. C. 257; *Luxton* v. *North River Bridge Co.*, 153 U. S. 525, 529–530; *Hanson Co.* v. *United States*, 261 U. S. 581. If the Federal Government has constitutional power to acquire property for a project or program, then it follows that a taking would almost always be for a "public use"; and, in addition, a Congressional declaration, as in the Redevelopment Act, that the proposed use is "public" has been held nearly immune from judicial scrutiny. *United States ex rel. T. V. A.* v. *Welch*, 327 U. S. 546. For the reason noted above, it is clear that there is no occasion to overturn the general legislative finding of "public use" with respect to the Redevelopment Act. The elimination and prevention of slums and slum conditions is clearly a proper function of a government concerned with minimizing disease, delinquency, and injury, and with increasing the opportunities for fruitful living.

B

The fact that portions of the condemned property will be leased or sold to private developers does not prevent acquisition of appellants' land or make the use a "private" one. The Constitution does not require public *occupation* of condemned property, and many cases have upheld takings of land or materials for immediate private possession where, on a larger view, the public use or interest was dominant. See, e. g., *Brown* v. *United States*, 263 U. S. 78; *Highland* v. *Russell Car Co.*, 279 U. S. 253; *Luxton* v. *North River Bridge Co.*, 153 U. S. 525. Under the Redevelopment Act, the public is served and protected by the clearance of slums, the prevention of their return, and by the availability of low-cost housing. In addition, "public use" is preserved by the restrictions imposed on the purchasers and developers who must continue to comply with the redevelopment plan.

C

The key feature of the Redevelopment Act (and of similar state legislation) is that the problem is viewed and treated on an *area* basis. The needs of the area *as a whole* furnish both the justification for this approach and the test by which actions under the Act must be evaluated.

1. There is clearly adequate support for the Congressional view that area planning and redevelopment is appropriate and essential to attain the goals of slum clearance and slum prevention.

Earlier efforts employing regulatory and health legislation, or limited to individual deteriorated buildings, have not been successful, and for over a decade and a half federal and state legislation in this field has turned to area redevelopment as the most promising method. The legislatures have believed that the goal of neighborhoods which will not deteriorate into slums or near-slums can be obtained only by adequate planning and redevelopment of the area as a whole. The opinion of experts and of interested citizens concurs. See, e. g., the Report of the President's Advisory Committee on Government Housing Policies and Programs (December 1953). State court decisions are in accord that the "evil inheres not so much in this or that individual structure as in the character of a whole neighborhood of dilapidated and unsanitary structures." *Matter of N. Y. City Housing Authority* v. *Muller*, 270 N. Y. 333, 341, 1 N. E. 2d 153, 155.

2. Under the area test, commercial property, even though it may not itself be deteriorated, can plainly be taken as part of the execution of the area plan. Individual structures cannot be left free from the plan—to remain vested as immovable obstacles to proper replanning or potential foci of deterioration.

3. Similarly, the Redevelopment Agency must be free to take the fee title to the land. If that were not done, it would normally be impossible to assure the reconstruction and maintenance of the

area as a healthy community, since the present congeries of individual owners obviously cannot be relied on for that purpose.

4. The same standard of the needs of the area-as-a-whole shows that, despite the district court's doubts, the redevelopment area need not be limited to those places on which slums now exist. Properly to rehabilitate and replan a neighborhood, so that it will not at once recommence to go downgrade, requires sufficient space for residences, commercial establishments, parks, recreational facilities, and adequate thoroughfares, light, and air. This could not be accomplished if the area were strictly limited to present overcrowded, slum housing.

The record shows that the district involved here, Project Area B, is now a slum and a blighted, substandard area which needs rehabilitation and renewal, and that the redevelopment plan conforms to and falls under the provisions of the Act. The district court's unfavorable observations about the plan stemmed from its failure to employ the test of the needs of the whole area.

D

The district court also erred in declaring a broader standard of judicial view of condemnations than is admissible under settled doctrine. As noted above, the general Congressional declaration in the Redevelopment Act that takings under it are for a "public use" is largely, if not entirely,

immune from judicial scrutiny. And the settled rule is that the courts cannot inquire into the necessity for condemning a particular piece of property for a "public use." The amount of the property taken, and the type of interest seized, are also free from review under the accepted rules. A few lower courts have attempted to broaden the scope of judicial inquiry, but these efforts have not been successful. A broader rule would entail practical difficulties and would cast upon the courts the choices which Congress has declared should be made by the administrative agencies.

In the redevelopment field, these settled principles require the courts to abstain from attempting to oversee the boundaries of the projects, as well as from passing on the "necessity" for taking this or that structure.

E

The Redevelopment Act properly states the purposes of acquisition and delegates to the administrative authorities the details of selection of particular properties to be acquired to serve those purposes. Condemnation is not regulation and, as with appropriations of money for governmental purposes, very broad criteria are constitutionally sufficient to guide the administrators. But even if the standards appropriate to regulatory legislation were applicable, the Act would be valid. The criteria set forth in Section 2 ("Gen-

eral Purposes") and elsewhere in the Act are comparable to those in many Federal statutes previously sustained. See, e. g., *Lichter* v. *United States*, 334 U. S. 742, 785–786. In addition, there are helpful general guides in the kindred legislation of thirty-four states which can properly be used by the District of Columbia Agency. Cf. *Fahey* v. *Mallonee*, 332 U. S. 245, 250–253.

ARGUMENT

The district court has dismissed the complaint and upheld the validity of the District of Columbia Redevelopment Act as against appellants' attack. The Government, of course, supports this holding and will in this brief refute the challenge which appellants renew here. But the court below, while it sustained the statute's constitutionality, also announced by way of *quasi-dictum* some limitations and restrictions which we believe to be erroneous and severely hobbling to the redevelopment program. A major portion of our argument will therefore be devoted to showing that these limiting rules are unwarranted and unnecessary to sustain the validity of the Act. The highest courts of some seventeen states[4] have already upheld comparable redevelopment statutes without imposing such restrictions, and in many cases these courts have expressly rejected contentions akin to those ac-

[4] Redevelopment programs have been adopted in some 34 states, the District of Columbia, and four territories.

cepted and espoused by the district court below.[8] There is no reason why the District of Columbia Act—passed by Congress "to protect and promote the welfare of the inhabitants of the seat

[8] See *Matter of New York City Housing Authority* v. *Muller*, 270 N. Y. 333, 1 N. E. 2d 153; *Murray* v. *La Guardia*, 291 N. Y. 320, 52 N. E. 2d 884, certiorari denied, 321 U. S. 771; *Kaskel* v. *Impelliteri*, 306 N. Y. 73, 115 N. E. 2d 659; *Opinion to the Governor*, 76 R. I. 249, 69 A. 2d 531; *Ajootian* v. *Providence Redevelopment Agency*, 91 A. 2d 21 (R. I.); *State ex rel. Brusstle, City Solicitor* v. *Rich*, 159 Ohio St. 13, 110 N. E. 2d 778; *Opinion of the Justices*, 254 Ala. 343, 48 So. 2d 757; *Nashville Housing Authority* v. *City of Nashville*, 192 Tenn. 103, 237 S. W. 2d 946; *Belovsky* v. *Redevelopment Authority*, 357 Pa. 329, 54 A. 2d 277; *Schenck* v. *City of Pittsburgh*, 364 Pa. 31, 70 A. 2d 612; *In re Edward J. Jeffries Homes Housing Project*, 306 Mich. 638, 11 N. W. 2d 272; *In re Slum Clearance in City of Detroit*, 331 Mich. 714, 50 N. W. 2d 340; *General Development Corp.* v. *City of Detroit*, 322 Mich. 495, 33 N. W. 2d 919; *Rowe* v. *Housing Authority*, 220 Ark. 698, 249 S. W. 2d 551; *Zurn* v. *City of Chicago*, 389 Ill. 114, 59 N. E. 2d 18; *Chicago Land Clearance Comm.* v. *White*, 411 Ill. 310, 104 N. E. 2d 236; *People ex rel Gutknecht* v. *City of Chicago*, 414 Ill. 600, 111 N. E. 2d 626; *Redfern* v. *Board of Commissioners of Jersey City*, 137 N. J. L. 356, 59 A. 2d 641; *Herzinger* v. *Mayor & City Council of Baltimore*, 203 Md. 49, 98 A. 2d 87; *Foeller* v. *Housing Authority of Portland*, 198 Or. 205, 256 P. 2d 752; *Hunter* v. *Norfolk Redevelopment and Housing Authority*, 195 Va. 326, 78 S. E. 2d 893; *Velishka* v. *City of Nashua*, 106 A. 2d 571 (N. H. 1954); *Gohld Realty Co.* v. *City of Hartford*, 104 A. 2d 365 (Conn., 1954); *State on Inf. of Dalton* v. *Land Clearance for Redevelopment Authority*, 270 S. W. 2d 44 (Mo., July 1954); *Land Clearance for Redevelopment Authority* v. *City of St. Louis*, 270 S. W. 2d 58 (Mo., July 1954); *Crommett* v. *City of Portland*, Sup. Jud. Ct. of Maine, decided Sept. 3, 1954; see also *Redevelopment Agency of City and County of San Francisco*, 266 P. 2d 105 (Cal. App.) (Jan. 29, 1954).

Contra: Adams v. *Housing Authority of City of Daytona Beach*, 60 So. 2d 663 (Fla.); *Housing Authority of the City of Atlanta* v. *Johnson*, 209 Ga. 560, 74 S. E. 2d 891.

of the Government"—should receive a special gloss making it much less effective than the legislation adopted by the several States.

THE DISTRICT OF COLUMBIA REDEVELOPMENT ACT IS CONSTITUTIONAL

Appellants' complaint attacks the Act. on its face, on two grounds (R. 3–4): (a) that no commercial property can validly be taken for redevelopment purposes, and (b) that Congress has invalidly permitted the lease or sale of the condemned property to private persons. In this Court appellants add (c) a challenge to the sufficiency of the legislative standards and (d) adopt and expand the lower court's doubts as to the validity of redevelopment on an area basis. The district court rejected appellants' two original blanket charges but in its lengthy opinion it took special pains to declare or intimate (1) serious restrictions on the taking of the fee title to land encompassed in a project (R. 63), (2) a broad standard of judicial review of the necessity and propriety of takings for redevelopment purposes (R. 59, 63–65), (3) a stern limitation, if not prohibition, on the power to redevelop an area upon only a part of which slums now exist (R. 68–75), and, finally (4) a rejection and narrowing of the legislative standards for authorization of a project (R. 69*ff*). None of these points, whether made by the court below or by the appellants, deserves the acceptance of this Court, as we shall show in the course of presenting

affirmatively the grounds for upholding the Redevelopment Act.

A. CONGRESS HAS GENERAL POWER TO PROMOTE THE PUBLIC HEALTH, SAFETY, MORALS, AND WELFARE OF THE DISTRICT OF COLUMBIA BY ELIMINATING AND PREVENTING SLUMS, AND TO USE EMINENT DOMAIN FOR THAT PURPOSE

1. In legislating with respect to the District of Columbia, Congress exercises both its "national power" and the legislative power which may be exercised by a state in dealing with its affairs. *District of Columbia* v. *Thompson Co.*, 346 U. S. 100, 108; *Atlantic Cleaners & Dyers* v. *United States*, 286 U. S. 427, 435. The protection of the public health, safety, morals and welfare is, of course, one of the fundamental goals of such powers. In the Redevelopment Act, Congress declared that conditions with respect to substandard housing and blighted areas were injurious to those interests and that its purpose was to eliminate all such injurious conditions. In reporting the bill, the committees of both Houses of Congress stated: "The prompt enactment of this bill is necessary as an emergency measure. The job of clearing Washington of its slums has been too long delayed. It should be commenced immediately. Enactment of this legislation will be a long forward step toward an objective with which no one can quarrel; namely, the elimination of slum conditions which should not be permitted to exist in the Capital of the United States of America." S. Rept. No. 591, 79th Cong., 1st sess., p. 5; H.

Rept. No. 2465, 79th Cong., 2d sess., p. 4. The accomplishment of this purpose was obviously a legitimate subject of legislation for the District.

Moreover, the national interest in the elimination of such conditions has been recognized by Congress in the federal assistance furnished to state and local redevelopment programs under the Housing Act of 1949, Act of July 15, 1949, 63 Stat. 413, 42 U. S. C. 1441 *et seq.*, and, more recently, in Title III ("Slum Clearance and Urban Renewal") of the Housing Act of 1954, Act of August 2, 1954, Public Law 560, 83d Cong., 68 Stat. 590. General federal authority to aid the improvement of housing conditions by grants, credits, and loans was sustained by this Court in *Cleveland* v. *United States*, 323 U. S. 329, as applied to low-cost housing projects, the opinion stating simply (323 U. S. at 333): "Challenge of the power of Congress to enact the Housing Act must fail."

The Act referred to, the United States Housing Act of 1937, Act of September 1, 1937, 50 Stat. 888, 42 U. S. C. 1401, was intended to serve the purpose of remedying "the unsafe and insanitary housing conditions and the acute shortage of decent, safe, and sanitary dwellings for families of low income, in rural or urban communities, that are injurious to the health, safety, and morals of the citizens of the Nation." Redevelopment programs have the same basic objective of eliminating conditions with respect to substandard housing and blighted areas

that are injurious to the public health, safety, morals and welfare. Certainly, no proof is required today of the relationship of substandard housing and blighted areas to the growth of slums and the spread of disease and crime and the consequent disproportionate expenditure of public funds for crime prevention and correction, the treatment of juvenile delinquency and the maintenance of police, fire and accident protection. See *supra*, pp. 7–8, 9, *infra*, pp. 31–39. There can be no question but that the purposes of the Redevelopment Act represent a proper subject for the exercise of the authority of Congress both in the national field and under its authority to legislate for the District of Columbia.*

2. In general, the power of eminent domain may be utilized by Congress as a means of acquiring property in the execution of a proper federal purpose. The authority to obtain property by condemnation is not expressly granted to the federal government in the Constitution. It exists as an incident of sovereignty and as one of the

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*On redevelopment legislation, see, e. g., Riesenfield and Eastlund, *Public Aid to Housing and Land Redevelopment*, (1950) 34 Minn. L. Rev. 610; Brown, *Urban Redevelopment*, (1949) 29 Boston Univ. L. Rev. 318; Robinson, *A New Era In Public Housing*, Wisc. L. Rev., 1949, p. 695; Robinson and Weinstein, *The Federal Government and Housing*, Wisc. L. Rev., 1952, p. 581; Mandelker, *Public Purpose in Urban Redevelopment*, (1953) 28 Tulane L. Rev. 96; Hill, *Recent Slum Clearance and Urban Redevelopment Laws*, (1952) 9 Wash. and Lee L. Rev. 173; *Urban Redevelopment: Problems and Practices* (1953 ed.).

means of carrying out the granted powers. *Kohl* v. *United States*, 91 U. S. 367, 371; *Cherokee Nation* v. *Kansas Railway Co.*, 135 U. S. 641, 656; *Luxton* v. *North River Bridge Co.*, 153 U. S. 525, 529–530; *Chappell* v. *United States*, 160 U. S. 499, 509–510; *United States* v. *Gettysburg Electric Ry.*, 160 U. S. 668, 679. Like other incidental powers, such as the power to create corporations, it is not an independent substantive power but a means by which primary objects are accomplished. "And whenever it becomes necessary, for the accomplishment of any object within the authority of Congress, to exercise the right of eminent domain and take private lands, making just compensation to the owners, Congress may do this * * *." *Luxton* v. *North River Bridge Co.*, 153 U. S. 525, 529–530. The power is necessary so that the governmental function will not be frustrated by an owner's unwillingness to sell. *Kohl* v. *United States*, 91 U. S. 367, 371–372. The reach of eminent domain must therefore be, and is, as broad as the authority to acquire property by purchase; hence, it is constitutional to give general power to federal officers to acquire property by eminent domain whenever they are authorized to purchase it for the particular public purpose. Act of August 1, 1888, 25 Stat. 357, 40 U. S. C. 257; *Chappell* v. *United States*, 160 U. S. 499, 511; *Hanson Co.* v. *United States*, 261 U. S. 581; *United States* v. *Advertising Checking Bureau*, 204 F. 2d 770 (C. A. 7), and cases there cited.

The need to acquire property for a redevelopment project obviously cannot be gainsaid, but appellants question whether this is a "public use" within the Fifth Amendment. Since the power of eminent domain is but one of the means by which to acquire the needed property, the question of "public use" in federal condemnation proceedings presents, in one aspect, simply the issue of the constitutionality of the Act under which the land is to be acquired. "If the Federal Government, under the Constitution, has power to embark upon the project for which the land is sought, then the use is a public one." *Barnidge* v. *United States*, 101 F. 2d 295, 298 (C. A. 8); *City of Oakland* v. *United States*, 124 F. 2d 959, 964 (C. A. 9), certiorari denied, 316 U. S. 679. The test is, then, whether Congress has power to bring into being the project or program which its legislation contemplates.

In the Redevelopment Act (Sec. 2), Congress declared that the acquisition and assembly of real property and its leasing or sale for redevelopment, pursuant to a project area redevelopment plan, "is hereby declared to be a public use." Such a declaration does not, of course, conclude the constitutional issue. But the decision of Congress "is entitled to deference until it is shown to involve an impossibility." ***Old Dominion Co.* v.** *United States*, 269 U. S. 55, 66; *United States ex rel T. V. A.* v. *Welch*, 327 U. S. 546, 552. For the

reasons summarily stated *supra*, pp. 19–21, it is clear that the purposes of the Redevelopment Act are a proper subject of action by Congress as legislature for the District of Columbia. Clearance of slums leading to construction of substitute low-rent housing projects—one of the prime features of most redevelopment programs—has been universally upheld in over thirty States as a proper function of government which can be implemented by use of the eminent domain power. See *Herzinger* v. *Mayor & City Council of Baltimore*, 203 Md. 49, 60, 98 A. 2d 87, 92; Riesenfeld and Eastlund, *Public Aid to Housing and Land Redevelopment*, (1950) 34 Minn. L. Rev. 610, 634–5. This has been the holding in the District of Columbia (*Keyes* v. *United States*, 119 F. 2d 444 (C. A. D. C.), certiorari denied, 314 U. S. 636) and the court below accepted that ruling (R. 52).[7] By the same token, there is plainly adequate support for similar public intervention in the clearance of slum-breeding conditions and substitution of an area of residences of varied types and values (and other structures) which will not deteriorate to slum level. *Prevention* of slum and slum-breeding conditions, through the replanning and redevelopment of blighted areas and regions of

[7] The redevelopment plan for Project Area B, involved here, specifies that one-third of the dwellings be for low rent (R. 49, 52).

There is also no doubt as to the validity of the portion of the plan providing for the acquisition of land for public buildings, roads, schools, parks, etc. See R. 52.

substandard housing conditions, is another admissible goal for a government. In short, "the end to be attained by this proposed use, as provided for by the act of Congress, is legitimate, and lies within the scope of the Constitution." *United States* v. *Gettysburg Electric Ry.*, 160 U. S. 668, 681.*

B. THE FACT THAT PORTIONS OF THE CONDEMNED PROPERTY WILL BE LEASED OR SOLD TO PRIVATE DEVELOPERS DOES NOT PREVENT ACQUISITION OF THE LAND

The primary basis of appellants' attack upon the Act is the fact that after the land in the area is acquired and cleared, and appropriate portions set aside for public facilities, the remainder will, if feasible, be leased or sold to private individuals or corporations for redevelopment according to the plan. This, it is argued (App. Br. 7–11), constitutes no more than condemnation of the land from one private owner to sell to another for his own uses.

The argument, which was overtly rejected by the district court (R. 60), ignores the fundamental purpose of the undertaking and erroneously assumes that "public use" is narrowly restricted to physical occupation by the public. The Federal Constitution does not impose any such restriction upon the power of eminent domain. On the contrary, the power may be exercised in

* The court below did not, in terms, hold the legislative purposes invalid (see R. 58–59), but the conditions imposed or intimated by the court (discussed below) may well prevent the attainment of these congressional objectives.

any manner appropriate to the accomplishment of authorized federal purposes. There are many instances where it is desirable, if not essential, to transfer to private ownership land condemned in connection with federal projects. *Brown* v. *United States*, 263 U. S. 78, where land was condemned as a substitute site for a portion of a town to be flooded by a federal reservoir, is typical of many instances where the furnishing of a substitute is the most reasonable method of providing compensation. In *United States* v. *Miller*, 317 U. S. 369, the land was condemned in order to relocate a railroad line flooded by the waters of Shasta Dam. See also *Woodville* v. *United States*, 152 F. 2d 735 (C. A. 10), certiorari denied, 328 U. S. 842. *United States ex rel. T. V. A.* v. *Welch*, 327 U. S. 546, upheld the taking of land because it would be isolated by flooding of a highway and the most practical solution was to include the lands in the Great Smoky Mountains National Park. The Court said (p. 554): "And when serious problems are created by its public projects, the Government is not barred from making a common sense adjustment in the interest of all the public. *Brown* v. *United States*, 263 U. S. 78."

The need for war materials produced many examples of condemnation or requisition in which the public purpose was served through the medium of private enterprise. Thus, in *United States* v. *243.22 Acres of Land*, 129 F. 2d 678,

683 (C. A. 2), certiorari denied, 317 U. S. 698, the court held that proof that the land condemned would be leased with an option to purchase to Republic Aviation Corporation, which was engaged in the manufacture of airplanes for the Government, constituted no defense to the taking. Similarly, the condemnation of land for the purpose of the expansion of the facilities of a company producing steel forgings for naval purposes was sustained in *United States* v. *Marin*, 136 F. 2d 388, 389 (C. A. 9), the court saying, "Congress may employ or authorize the employment of any appropriate means to serve a legitimate public end. *Luxton* v. *North River Bridge Co.*, 153 U. S. 525, 529, 530; *Highland* v. *Russell Car Co.*, 279 U. S. 253."[9] In the *Highland* case, this Court stated (279 U. S. at 260) that the taking of coal for use by a private manufacturer in the production of snow plows to be sold to railroads during the war would be a public use.[10] That the Constitution does not require the Government to use or occupy condemned land when the public purpose can be accomplished more reasonably by

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[9] As the Court knows, leases and sales of land and plants to war contractors was not uncommon during World War II.

[10] See also *United States* v. *1538 Acres of Land in New Castle County*, 61 F. Supp. 937 (D. Del.), where an easement was taken for a railroad spur to serve a military air base, and *United States* v. *Certain Interests in Land Situate in Franklin County, Ill.*, 58 F. Supp 739 (E. D. Ill.), where an easement was taken for a pipe line to supply natural gas to a manufacturing plant making war supplies.

means of private operation is also apparent from the established rule that the eminent domain power may in appropriate circumstances be given to private corporations. *Luxton* v. *North River Bridge Co.*, 153 U. S. 525. Many of the country's railroads, and some other utilities, could not have been built without exercise of this authority.

The health and welfare aims of the Redevelopment Act are, as we have noted (*supra*, pp. 19–21, 24), clearly legitimate. They will be accomplished primarily by the assembly of the land in the project area, the clearance of structures, and the replanning of the area. Slums and slum-breeding conditions, with all that they entail, are to be eliminated and prevented; and Congress has found that if this can be adequately done (in the particular instance) by private enterprise, the Redevelopment Agency is preferably to employ that means. See Section 7 (g). To characterize such an undertaking as simply a real estate promotion (see App. Br. 6, 8–9) is to ignore both the declared Congressional purposes and the essential requirements of the Act. The elimination of the injurious conditions by such assembly and replanning is itself justification for the project. But the Act goes further. The lessee or purchaser is not given a free hand to deal with the property as he wishes. Instead, he is expressly required to conform to the redevelopment plan. His obligations in this regard must run with the land, and other detailed provisions are made for protection of the

plan (Sections 7 (d), (e), (h), 11). Congress has thus made specific and detailed provisions for such continuing supervision as is necessary to assure the attainment of its objectives. In the light of these controls, it would surely be an invasion of the legislative domain for the courts to reject Congress' choice of private enterprise as the instrument of redevelopment and to insist that only public agencies can be employed.

The overwhelming majority of state courts which have considered similar redevelopment statutes (see fn. 5, *supra*, p. 17) have rejected the constitutional attack based upon the fact that, after assembly, the land may or will be sold to private interests. These decisions have, in the main, emphasized two considerations: First, that the assembly and clearance of the land accomplishes the public purpose and the sale to private interests is purely an incident to the basic program; public ownership is not required to continue for a longer time than is necessary for the accomplishment of the public purpose. E. g., *Belovsky* v. *Redevelopment Authority*, 357 Pa. 329, 54 A. 2d 277; *Rowe* v. *Housing Authority*, 220 Ark. 698, 249 S. W. 2d 551; *Foeller* v. *Housing Authority of Portland*, 198 Or. 205, 233–234, 236, 240–243, 256 P. 2d 752, 766–767, 769–770; *Crommett v. City of Portland*, Sup. Jud. Ct. of Maine (Sept. 3, 1954); *State on Inf. of Dalton* v. *Land Clearance for Redevelopment Authority*, 270 S. W. 2d 44, 50–51 (Mo., July 1954). Another considera-

tion which has been stressed is that, in view of the requirement that the property shall be developed and used in accordance with the redevelopment plan for the purpose of preventing a reversion or deterioration to slum conditions, the public use for which the land was taken continues after the property is transferred to private persons and "the public purposes for which the land was taken are still being accomplished." E. g., *Velishka* v. *City of Nashua*, 106 A. 2d 571, 574 (N. H. 1954); *Gohld Realty Co.* v. *City of Hartford*, 104 A. 2d 365, 369–370 (Conn. 1954); *Chicago Land Clearance Comm.* v. *White*, 411 Ill. 310, 316, 104 N. E. 2d 236; *Land Clearance for Redevelopment Authority* v. *City of St. Louis*, 270 S. W. 2d 58, 65 (Mo., July 1954). Both factors are, of course, integral to the District of Columbia Act.

C. CONGRESS COULD VALIDLY AUTHORIZE THE EXECUTION OF THE REDEVELOPMENT PROGRAM ON AN AREA BASIS, INCLUDING THE TAKING OF NONDETERIORATED COMMERCIAL PROPERTY

The key feature of the redevelopment program—the essential characteristic which forms the concept and sustains its validity—is that the problem is resolved on the basis of a "project area," which is defined as an area of such extent and location as may be adopted as an appropriate unit of redevelopment planning for a redevelopment project (Sec. 3 (j)). There is express Congressional recognition of the social fact that injurious slum, slum-breeding, and substandard conditions are caused by a combination of many

factors, including obsolete layout, and that "control by regulatory processes" has "proved inadequate and insufficient to remedy the evils" (Sec. 2); the inadequacy of the structure-by-structure approach, through enforcement of health laws and the condemnation of particular buildings, is thus given by Congress as a major reason for embarking upon this program. And the entire Act is premised upon execution of its purposes in terms of a project area. Section 6 (b) provides for adoption by the Planning Commission "of the boundaries of the project area proposed by it" and the approval of such boundaries by the District Commissioners. The Section then contemplates the adoption and approval "of the redevelopment plan of the project area which shall contain a site and use plan for the redevelopment of the area." The remaining provisions of the Act are all couched in terms of the proceedings to be taken with reference to the project area as an entity.

The concept and implications of a project area and redevelopment plan have drawn severe fire in the opinion below which appears to attempt, directly and indirectly, to circumscribe the redevelopment program as a whole and, in particular, to cast grave doubt on the plan for Project Area B which encompasses appellants' property. In our view, the court's strictures and restrictions stem from a fundamental failure to view the problem as a whole in its proper setting (see

infra, pp. 31–46), as well as from an erroneous conception of the role of the judiciary in this field (discussed in Point D, *infra*, pp. 46–53).

1. *There is adequate support for the Congressional view that area planning is appropriate and essential to attain the goals of slum clearance and slum prevention.*

(a). Because it was not satisfied with earlier efforts to solve the problem of detrimental substandard housing and blighted areas by regulatory action or by public low-cost housing projects, Congress discarded the piecemeal or the individual-structure approach and sought to attain its goal by replanning and redeveloping the whole of substantial areas. This is in full accord with the trend of federal and state legislation relating to the elimination and prevention of slums and substandard living conditions.

That the nation's slum problem extended far beyond individual houses was recognized by Congress a decade and half ago in the United States Housing Act of 1937, Act of September 1, 1937, 50 Stat. 888, 42 U. S. C. 1401, where it defined "slum" as "any area where dwellings predominate which, by reason of dilapidation, overcrowding, faulty arrangement or design, lack of ventilation, light or sanitation facilities, or any combination of these factors, are detrimental to safety, health, or morals." Subsequent experience amply confirmed the fact that the causes of slums are not limited to, and cannot be reached through

sole concentration on, the individual dilapidated house, but that an area approach was essential to attack the problem successfully. Hence, the Housing Act of 1949, Act of July 15, 1949, 63 Stat. 413, 420, 42 U. S. C. 1441, 1460 (c), provided that a "project" might include

> (1) acquisition of (i) a slum area or a deteriorated or deteriorating area which is predominantly residential in character, or (ii) any other deteriorated or deteriorating area which is to be developed or redeveloped for predominantly residential uses, or (iii) land which is predominantly open and which because of obsolete platting, diversity of ownership, deterioration of structures or of site improvements, or otherwise substantially impairs or arrests the sound growth of the community and which is to be developed for predominantly residential uses, or (iv) open land necessary for sound community growth which is to be developed for predominantly residential uses * * *; (2) demolition and removal of buildings and improvements; (3) installation, construction, or reconstruction of streets, utilities, and other site improvements essential to the preparation of sites for uses in accordance with the redevelopment plan; and (4) making the land available for development or redevelopment by private enterprise or public agencies (including sale, initial leasing, or retention by the local public agency itself) at its fair value for uses in accordance with the redevelopment plan.

The entire subject was recently reexamined by Congress, resulting in the Housing Act of 1954, Act of August 2, 1954, 68 Stat. 590, which expanded the scope of general federal redevelopment activities, adopted the broader term "Slum Clearance and Urban Renewal" in Title III, and enlarged the term "project".[11]

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[11] The 1949 Housing Act was amended by Section 311 to provide:

"(c) 'Urban renewal project' or 'project' may include undertakings and activities of a local public agency in an urban renewal area for the elimination and for the prevention of the development or spread of slums and blight, and may involve slum clearance and redevelopment in an urban renewal area, or rehabilitation or conservation in an urban renewal area, or any combination or part thereof, in accordance with such urban renewal plan. For the purposes of this subsection, 'slum clearance and redevelopment' may include (1) acquisition of (i) a slum area or a deteriorated or deteriorating area, or (ii) land which is predominantly open and which because of obsolete platting, diversity of ownership, deterioration of structures or of site improvements, or otherwise, substantially impairs or arrests the sound growth of the community, or (iii) open land necessary for sound community growth which is to be developed for predominantly residential uses: *Provided*, That the requirement in paragraph (a) of this section that the area be a slum area or a blighted, deteriorated, or deteriorating area shall not be applicable in the case of an open land project: *And provided further*, That financial assistance shall not be extended under this title for any project involving slum clearance and redevelopment of an area which is not clearly predominantly residential in character unless such area is to be redeveloped for predominantly residential uses, except that, where such an area which is not predominantly residential in character contains a substantial number of slum, blighted, deteriorated, or deteriorating dwellings or other living accommodations, the elimination of which would tend to promote the public

The President's message of January 25, 1954, on the housing program, had emphasized the necessity of eliminating the *causes* of slum and blight (H. Doc. No. 306, 83d Cong., 2d sess.). The Congressional Committees likewise stressed

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health, safety and welfare in the locality involved and such area is not appropriate for redevelopment for predominantly residential uses, the Administrator may extend financial assistance for such a project, but the aggregate of the capital grants made pursuant to this title with respect to such projects shall not exceed 10 per centum of the total amount of capital grants authorized by this title; (2) demolition and removal of buildings and improvements; (3) installation, construction, or reconstruction of streets, utilities, parks, playgrounds, and other improvements necessary for carrying out in the area the urban renewal objectives of this title in accordance with the urban renewal plan; and (4) making the land available for development or redevelopment by private enterprise or public agencies (including sale, initial leasing, or retention by the local public agency itself) at its fair value for uses in accordance with the urban renewal plan. For the purposes of this subsection, 'rehabilitation' or 'conservation' may include the restoration and renewal of a blighted, deteriorated, or deteriorating area by (1) carrying out plans for a program of voluntary repair and rehabilitation of buildings or other improvements in accordance with the urban renewal plan; (2) acquisition of real property and demolition or removal of buildings and improvements thereon where necessary to eliminate unhealthful, insanitary or unsafe conditions, lessen density, eliminate obsolete or other uses detrimental to the public welfare, or to otherwise remove or prevent the spread of blight or deterioration, or to provide land for needed public facilities; (3) installation, construction, or reconstruction, of such improvements as are described in clause (3) of the preceding sentence; and (4) the disposition of any property acquired in such urban renewal area (including sale, initial leasing, or retention by the local public agency itself) at its fair value for uses in accordance with the urban renewal plan."

the importance of attacking the cause of slums and urban blight and not merely the symptoms (H. Rep. No. 1429, 83d Cong., 2d sess., pp. 2, 13–14, 22–24, 51–52; S. Rep. No. 1472, 83d Cong., 2d sess., pp. 7, 24–25, 35–36, 78–79). The House Report stated (p. 23):

> It should be pointed out that in many cases, rehabilitation of dwellings alone would not reestablish a deteriorated area as a sound neighborhood, as older deteriorated neighborhoods frequently are characterized by the poor condition of their streets and alleys, the lack of adequate sewers, poor lighting, the almost complete lack of playgrounds, parks, or other open spaces, and by old and inadequate school buildings. Parks, playgrounds, and other recreation areas are thus essential to the reestablishment and maintenance of healthy neighborhoods. Also, streets, alleys, sidewalks, street lights, and other improvements must be restored and rehabilitated to meet modern needs in order to achieve sound and lasting rehabilitation and conservation objectives.

As noted above (fns. 4, 5, *supra*, pp. 16–17), the states have been keeping apace. Thirty-four states and four territories have adopted redevelopment legislation similar to the District of Columbia Act now before the Court, and have thus indicated that in their view the vice of urban blight can and should be attacked by area-wide plans. The stark fact that almost three-quarters of the state

legislatures are in accord with Congress goes far to demonstrate the reasonableness of their joint view.

(b). Expert opinion also concurs. The 1954 Housing Act, referred to above, was the outgrowth of an extensive study made by leading students and workers in this field, resulting in a detailed report, in December 1953, entitled "Report of the President's Advisory Committee on Government Housing Policies and Programs" (the "Advisory Report"). In stating the general objectives of the housing program, this Report said (p. 1):

> To wipe out existing slums and to check the spread of blight is a major goal of our housing program. To reach this goal we must remove houses and clear areas of our cities which are beyond recall; we must restore to sound condition all dwellings worth saving. In this way we can establish as healthy neighborhoods vast areas of our cities which are now blighted or badly threatened by blight.
>
> A piecemeal attack on slums simply will not work—occasional thrusts at slum pockets in one section of a city will only push slums to other sections unless an effective program exists for attacking the entire problem of urban decay. Programs for slum prevention, for rehabilitation of existing houses and neighborhoods, and for demolition of wornout structures and areas must advance along a broad unified front to accomplish the renewal of our towns and

> cities. This approach must be vigorously carried out in the localities themselves, and will require local solutions which vary widely from city to city.

A summary of the reasons why a piecemeal attack on slums will not work appears at pages 108–109 of the Report, which likewise discusses in detail the things that must be done and the appropriate role of the Federal Government, as well as the many relevant facts shown by surveys, census reports, and other sources (Advisory Report, pp. 105–252). The Committee was of the clear view that demolition of slums is not enough, even new construction is not enough; slums and slum conditions must be eliminated by preventing the spread of housing blight at earlier stages by replanning and redeveloping neighborhoods (Advisory Report, pp. 111–112).

(c). State court decisions sustaining similar projects have also specifically recognized the propriety of the area-wide approach. "The evil inheres not so much in this or that individual structure as in the character of a whole neighborhood of dilapidated and unsanitary structures." *Matter of N. Y. City Housing Authority* v. *Muller*, 270 N. Y. 333, 341, 1 N. E. 2d 153, 155, 105 A. L. R. 905, 910. "The squalor which people call slums does not consist of an isolated structure, but of a street or section of a city." *Foeller* v. *Housing Authority of Portland*, 198 Or. 205, 259, 262–3, 256 P. 2d 752, 777, 779. Answering the contention that the statute was invalid

because not limited to particular bad pieces of property, the court said in the *Foeller* case (p. 262): "One can readily understand that the problem which the area presents cannot be solved by dealing with this or that specific house. The mischievous results which the area yields come from it as a whole, and particularly from the fact that the useful and the outmoded are thrown together promiscuously." Similar contentions were rejected for the same reason in *State ex rel. Bruestle* v. *Rich*, 159 Ohio St. 13, 110 N. E. 2d 778, 789; *In re Housing Authority*, 233 N. C. 649, 65 S. E. 2d 761; *In re Edward J. Jeffries Homes Housing Project*, 306 Mich. 638, 11 N. W. 2d 272; *Stockus* v. *Boston Housing Authority*, 304 Mass. 507, 24 N. E. 2d 333; *Herzinger* v. *City of Baltimore*, 203 Md. 49, 98 A. 2d 87; *Oliver* v. *City of Clairton*, 374 Pa. 333, 340–342, 98 A. 2d 47, 51–52; *Hunter* v. *Norfolk Redevelopment & Housing Authority*, 195 Va. 326, 78 S. E. 2d 893, 901; *Kaskel* v. *Impelliteri*, 306 N. Y. 73, 115 N. E. 2d 659; *Gohld Realty Co.* v. *City of Hartford*, 104 A. 2d 365, 370–1 (Conn.); *Velishka* v. *City of Nashua*, 106 A. 2d 571, 574–575 (N. H.); *State on Inf. of Dalton* v. *Land Clearance for Redevelopment Authority*, 270 S. W. 2d 44, 53–54 (Mo.).[12]

[12] In most of these cases, the complaining landowner claimed that his property was not substandard or deteriorated and, in some, the property was commercial; the courts acknowledged these claims but nevertheless upheld the legislation because it relates to *areas*.

(d). The teaching of this complex of legislation, expert opinion, and judicial decision is that any particular taking for a redevelopment project cannot be viewed in isolation but must be tested against the standard of the needs of the plan as a whole. The criterion must be similar to that employed by this Court in *United States ex rel T. V. A.* v. *Welch*, 327 U. S. 546, in which it rejected the attitude of the Court of Appeals which, as this Court put it (p. 551): "first analyzed the facts by segregating the total problem into distinct parts and, thus, came to the conclusion that T. V. A.'s purpose in condemning the land in question was only one to reduce its liability arising from the destruction of the highway." The Court's view was that (pp. 552–553): "In passing upon the authority of the T. V. A. we would do violence to fact were we to break one inseparable transaction into separate units. We view the entire transaction as a single integrated effort on the part of T. V. A. to carry on its congressionally authorized functions."

2. *Commercial property may be taken as part of the execution of the area plan.*—From the area viewpoint, it is clear that the fact that appellants' property was used for commercial purposes rather than as a dwelling does not, as appellants argue (App. Br. 11–13), prevent its inclusion within the project area and its acquisition by eminent domain. In accordance with the

area-wide approach, the Redevelopment Act defines real property to include land and also to cover "land together with the buildings, structures, fixtures, and other improvements thereon" (Sec. 3 (m)), and authorizes the Redevelopment Agency to acquire and assemble "real property" (Sec. 5 (a)). These provisions are not limited to dwelling structures for the obvious reason that to exclude commercial holdings would clearly hamper the full achievement of the project, which would be only half-fulfilled at the stage when all slum or substandard housing is demolished; the substitution of an adequate and healthy neighborhood is the next step, and an essential one. All structures in the area, commercial or residential, must therefore be subject to the integrated plan, and none can have a *right* to be left standing as individual obstacles (though, of course, some may remain under the plan). See the state cases cited *supra*, p. 39, some of which involved commercial property. If special exceptions existed, the project might well be prevented by recalcitrant owners from obtaining the space or opportunity to relieve the various injurious factors—overcrowding of dwellings, the lack of parks, proper thoroughfares, and recreational areas and facilities, lack of light and air, outmoded street patterns—which are prime causes of slums (Advisory Report, p. 108). In any case, since the problem, as we have shown

(*supra*, pp. 31 *ff*), is not confined to individual substandard dwellings but extends to whole neighborhoods and districts, the remedy must be equally broad. A complete reorganization of the area is ordinarily necessary in order to eradicate the various causes of the evil. See Dr. Seckinger's affidavit, R. 11–12.

3. *The fee title to the land may normally be taken.*—The overriding standard—the needs of the redevelopment project as a whole—also shows the error in the district court's view that there are strict limitations on the taking of fee title. See R. 63. If slum *clearance* (in the strict sense) were the only goal, the district court might be correct. But to replace the slum with an adequate area which will not soon deteriorate, power to take the fee is essential. For one thing, it cannot normally be expected that individual owners will have the desire, resources, or foresight to replace the demolished structures with the appropriate buildings. For another, reliance can hardly be placed on an unorganized group of individual owners to construct and maintain, in their proper proportions, all the varied buildings—residences of different types, commercial establishments, recreational facilities—which are needed for a healthy community not congenitally destined to retrogress. Thirdly, taking of the fee is necessary so that the Agency can impose the restrictions on use of the property which will prevent the recurrence of slum and substandard

conditions. It is for reasons such as these that state courts have upheld the general right to take fee title for redevelopment projects. See *State ex rel. Bruestle* v. *Rich*, 159 Ohio St. 13, 29, 110 N. E. 2d 778, 788; *Foeller* v. *Housing Authority of Portland*, 198 Or. 205, 253–4, 256 P. 2d 752, 775; *State on Inf. of Dalton* v. *Land Clearance for Redevelopment Authority*, 270 S. W. 2d 44, 51, 57 (Mo.).

4. *The condemned area need not be limited to the existing slums.*—Another section of the district court's opinion (R. 68 *ff*) neglects the area test in announcing harsh limitations on the Redevelopment Agency's power to include in a project property which is not now slum. What we have said above about the power to take commercial property and the need for fee title (*supra*, pp. 40–42) applies here as well. The cardinal error is to insist on confining Congress to the destruction of existing slums, leaving replacement to the haphazard will and uncertain finances of the various private owners. To assure the type of neighborhood which is Congress' objective, the area must be planned as a whole and there must be power to take the land, whatever the particular structure now standing thereon.

Above all, the district court could not have written as it did without disregarding the proper legislative aim of slum *prevention*. Deteriorating areas which are not yet slums can be rehabilitated, and healthy neighborhoods which will not

deteriorate can be established. As the Advisory Report (referred to *supra*, pp. 36–38) states (pp. 111–112):

> The Subcommittee has previously emphasized that through demolition and new construction alone, it is impossible to eliminate slums because neither process goes at the cause of the trouble. An examination of the cost of the problem reinforces the necessity for developing a much broader approach to slum elimination. If the nature of the problem itself did not require it, budget considerations alone would be sufficient to impel anyone who was sincerely trying to eliminate slums to find ways of preventing the spread of blight in its earliest stages: of rehabilitating dwellings worth saving and of creating sound healthy neighborhoods out of the existing housing inventory. It is obvious that we must check the cycle of decay before slums are born.

Although it upholds the Act, the opinion below closes with a curious attack on the plan for Project Area B, but does not seem to go so far as to invalidate it (R. 73–75). Though the whole of that plan is not before the Court on this appeal, the observations of the district court impel us to state that the facts in the record make it clear that Project Area B is now a slum and a blighted, substandard area falling squarely within the Congressional classification. See the Statement,

supra, pp. 7–9, and R. 10–14A, 20, 43–44, 47–48. Dr. Seckinger's uncontradicted affidavit (R. 10–14A, 43–44) is proof enough of this fact; Mr. Searles' affdavit (R. 15*ff*) adds further evidence (see, especially, R. 19–20); and the separate appendix containing the redevelopment plan (see fn. 2, *supra*, p. 7) furnishes detailed documentation.

And the redevelopment plan for the area shows that the particular uses to be made of the land were designated in view of the many factors, such as diversity of population, availability of streets and recreational areas, which contribute to the production of slums. The district court's assertion (R. 74) that "the purpose of the plan, in addition to the elimination of slum condi ions, is to create a pleasant neighborhood," results only from rejection of various individual considerations because no one of them was the sole purpose of the plan. Thus, the plan requires that one-third of the dwellings be low-rent units. *Supra*, pp. 8, 24. But this limitation does not mean that the factor of low-rent housing was improperly slighted; sensible planning requires avoidance of maladjustments between supply and need in various categories of dwellings (see Advisory Report, pp. 137–138). Nor does the fact that the streets and alleys, as they must, follow the general pattern for the District of Columbia, while the plan provides that certain of the streets will be widened, render the factor of street patterns completely

irrelevant." Clearly, the purpose of the plan was not just to create a "pleasant neighborhood" but to prevent the recurrence of slum conditions—giving appropriate weight to all the causes of such conditions and the best available methods of prevention. Dr. Seckinger specifically declares that failure to take all the properties could jeopardize the fulfillment of the fundamental purposes of the plan and would create sore spots and health dangers (R. 11–12).

Here, too, the district court erred because it segregated the problem into separate and distinct parts, and failed to take account of the totality. This shortsightedness is particularly revealed in the court's consideration of the other redevelopment decisions and similar cases (R. 69–73). These opinions concern areas and plans quite comparable in their facts and setting to those of Project Area B, and the courts sustain the statutes against broad challenge without the qualifications and restrictions thought necessary here. See fn. 5, *supra*, p. 17 (*Kaskel* v. *Impellitteri*, 306 N. Y. 73, 115 N. E. 2d 659, is a recent noteworthy example). But in its survey of those cases, the district court concludes incorrectly that in each instance there were much more compelling circumstances and, at the same time, the

[15] One of the reasons for repealing the prohibition against use of alley dwellings in the District of Columbia was stated to be that many of these dwellings would be eliminated under redevelopment plans. S. Rep. No. 1762, 83d Cong., 2d sess.

court wholly disregards the statements in, and the tenor of, the opinions upholding the legislation. These decisions actually support the Government's position to the hilt, but the court below, which at bottom differs sharply from the state courts, does not really accept them at their proper weight. See also *Burt* v. *Pittsburgh*, 340 U. S. 802, upholding the Pittsburgh redevelopment plan on the authority of *United States ex rel. T. V. A.* v. *Welch*, 327 U. S. 546, *supra*, pp. 23, 26, 39–40.

D. THE LEGISLATIVE AND ADMINISTRATIVE DETERMINATION OF THE NECESSITY OR DESIRABILITY OF TAKING PROPERTY FOR REDEVELOPMENT PURPOSES IS RARELY, IF EVER, SUBJECT TO OVERTURN BY THE COURTS

The district court's opinion shows that it conceived its position as being a general supervisory authority over execution of the redevelopment program. It stated (R. 65) "We hold that the necessity for the seizure of the title to a parcel of real estate involves facts and judgment, that these are *essentially* for the administrators, and that the function of the courts is limited to determining whether the conclusions of the administrators *are within reason upon the record* and within the congressional delegation of authority." [Emphasis added.] Elsewhere, the opinion indicates that the court should undertake to determine whether the boundary line of the area was properly drawn (R. 69, 73–74), and the whole document is instinct with the view that the court's role in passing upon the need for condemnation

and redevelopment is active and large. However, this conception of the judicial function is clearly contrary to the settled doctrines.

1. As pointed out at the beginning of our argument (*supra*, pp. 22–23), a legislative determination that the use for which property is to be taken is a "public use" is nearly immune from judicial scrutiny. See *United States ex rel T. V. A.* v. *Welch*, 327 U. S. 546, 552, 557. Here, Congress has expressly authorized the taking of property on an area basis and has specifically characterized redevelopment uses as "public" (*supra*, pp. 4–5). There is more than adequate support for this legislative determination. *Supra*, pp. 19–21, 23–24, 31 *ff*. Insofar, therefore, as the court below seeks to revise the Congressional decision to plan an area basis, it has plainly stepped beyond its proper bounds.

2. The further question of the necessity or expediency of the condemnation of the particular property is, as this Court has many times declared, a legislative or political question not the subject of judicial inquiry. *Rindge Co.* v. *Los Angeles*, 262 U. S. 700, 709; *Joslin Co.* v. *Providence*, 262 U. S. 668, 678; *Bragg* v. *Weaver*, 251 U. S. 57, 58–59; *Sears* v. *City of Akron*, 246 U. S. 242, 251; *Boom Co.* v. *Patterson*, 98 U. S. 403, 406. This rule embraces the amount of property which should be taken. "The use for which the land is to be taken having been determined to be a public

use, the quantity which should be taken is a legislative and not a judicial question. *Shoemaker* v. *United States*, 147 U. S. 282, 298." *United States* v. *Gettysburg Electric Ry.*, 160 U. S. 668, 685; *Sweet* v. *Rechel*, 159 U. S. 380, 395. The principle likewise precludes judicial inquiry as to whether fee title or some lesser interest would serve the governmental purpose. *United States* v. *State of South Dakota*, 212 F. 2d 14 (C. A. 8); *Simmonds* v. *United States*, 199 F. 2d 305, 306–307 (C. A. 9); *United States* v. *State of New York*, 160 F. 2d 479, 480, 481 (C. A. 2), certiorari denied, 331 U. S. 832; *United States* v. *Kansas City, Kan.*, 159 F. 2d 125, 129 (C. A. 10); *United States* v. *6.74 Acres of Land in Dade County, Florida*, 148 F. 2d 618, 620 (C. A. 5); *United States* v. *Meyer*, 113 F. 2d 387 (C. A. 7), certiorari denied, 311 U. S. 706. "Necessity" within the meaning of this principle does not mean "indispensable" in the sense that the project could not be executed without the particular land. On the contrary, the statutes and the decisions, in describing the extent of the administrative discretion, have employed synonyms such as "expedient" (*Rindge Co. v. Los Angeles*, 262 U. S. 700, 709), "advantageous" (*Old Dominion Co.* v. *United States*, 269 U. S. 55, 66–67), "desirable" (*United States* v. *Carmack*, 329 U. S. 230, 247), and "advisable" (*Simmonds* v. *United States*, 199 F. 2d 305, 306–307).

Under the procedure of the Redevelopment Act, the necessity for taking particular lands is determined when the boundaries of the project area are adopted by the Planning Commission and approved by the District Commissioners (Sec. 6). Thus, appellants' notion (App. Br. 14) that a court is empowered to examine the boundary lines and determine whether one property on Fourth Street might be included, while other properties in the same block, across the street, or in the next block are excluded, represents an assertion of power to review the necessity for the taking and thus invades a field which is traditionally immune from judicial inquiry. Moreover, Congress was specifically advised as to the effect of the Redevelopment Act. The Senate report on the legislation stated that the Act "places great reliance upon the adequate discretion of the National Capital Park and Planning Commission, subject to the approval of the District Commissioners, to prescribe appropriate plans and rental specifications which shall control the development project areas," and went on to emphasize the fact that the personnel of these two public bodies, as well as that of the new agency "is such as to entitle them to public confidence." S. Rept. No. 591, 79th Cong., 1st sess., pp. 4–5.

For a court to oversee the choice of a boundary line or the size of the project area would not only

run counter to the decisions in this field, but it would also involve many practical difficulties. The process of review would almost inevitably involve simply a comparison with other possible locations of the boundary line and a weighing of the various considerations favoring one location or another. And the premise that there is an administrative record similar to those in proceedings of administrative agencies—the premise of the court below, *supra*, p. 47—misconceives the nature of the authority. The selection of a site is often an engineering question. *United States* v. *49.75 Acres of Land*, 76 F. Supp. 239, 249 (N. D. Ill.). Many factors of judgment are involved and ordinarily there is no occasion to reduce these considerations to formal record. See e. g., *United States* v. *Willis*, 211 F. 2d 1 (C. A. 8), certiorari denied, 347 U. S. 1015. Indeed, at times, interests of national security or other governmental reasons may preclude a detailed discussion of the precise reasons why the taking was necessary.[24] Neither constitutional nor statutory provisions require the preparation of any such formal record (dealing with each parcel) which is subject to review for reasonableness.

3. Some of the decisions of lower courts have,

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[24] For example, in *United States* v. *Merchants Transfer & Storage Co.*, 144 F. 2d 324 (C. A. 9), it was only while the appeal was pending that it was known that operations in the Pacific were approaching a critical stage, an important factor in weighing the necessity of taking warehouse space in Seattle, Washington.

in *dictum*,[15] asserted a limited power of judicial review, phrased in terms of determining whether the administrative official acted in "bad faith" or "arbitrarily or capriciously." Rather than recognizing any such qualification, this Court has stated that, once the question of public use has been determined, "the judicial function is exhausted; that the extent to which such property shall be taken for such use rests wholly in the legislative discretion, subject only to the restraint that just compensation must be made." *Shoemaker* v. *United States*, 147 U. S. 282, 298.[16] In *United States* v. *Carmack*, 329 U. S. 230, 243, the Court found it unnecessary to determine whether the selection could have been set aside by the courts as unauthorized by Congress if the designated officials had acted in bad faith or so "capriciously and arbitrarily" that their action was without adequate determining principle or was unreasoned. This was because the finding of the trial court characterizing the action as "arbi-

[15] We do not know of any case where the final decision of a federal court has resulted in denying the authority to condemn by application of the asserted power.

[16] Because the necessity and expediency of the taking may be determined by such agency and in such mode as a state may designate, a legislative or administrative hearing is not essential to due process. *Bragg* v. *Weaver*, 251 U. S. 57, 58; *Bindge Co.* v. *Los Angeles*, 262 U. S. 700, 709; *Joslin Co.* v. *Providence*, 262 U. S. 668, 678; *Adirondack Railway* v. *New York State*, 176 U. S. 335, 349. In the present case, such a hearing is required by the Act (Sec. 6 (b) (2)), and was actually held (R. 21).

trary" was, in fact, a finding largely of the comparative undesirability and lack of necessity for selection of the site, which were "matters for legislative or administrative determination rather than for a judicial finding". *Ibid.*, p. 247. Similarly, in *United States* v. *43,355 Square Feet of Land in King County, Wash.*, 51 F. Supp. 905, 909 (W. D. Wash.), the trial court held that the Government was acting capriciously and arbitrarily. In reversing the judgment in that case, the court of appeals said: "In essence, while protesting the contrary, the court substituted its judgment on the question of public necessity for that of the Secretary • • •." *United States* v. *Merchants Transfer & Storage Co.*, 144 F. 2d 324, 326 (C. A. 9). More recently, in *United States* v. *Willis*, 211 F. 2d 1 (C. A. 8), certiorari denied, 347 U. S. 1015, the appellate court reversed a trial court's conclusion that the administrative officers had acted in bad faith, or arbitrarily or capriciously, in seeking to acquire particular lands for a dam and reservoir project.

These examples show that the attempted qualification of "arbitrary or capricious conduct" always leads the courts to an examination of the various factors upon which the administrative determination is based and to a judicial analysis of the weight to which such factors are entitled. A conclusion—whether characterized as "arbitrary or capricious" or in "bad faith"—that

those factors are not entitled to the weight accorded to them by the administrative officers would almost always represent no more than a judgment of the court that the purpose might be accomplished without taking the land in question or by selecting some other site for the project." The discretion to make such a judgment rests in the legislature and those to whom it delegates the authority, not the courts. See *supra*, pp. 47–52; see also, the state redevelopment cases, *e. g.*, *Kaskel* v. *Impelliteri*, 306 N. Y. 73, 115 N. E. 2d 659. We may add that, of course, there has not been any claim that the Redevelopment Agency, the Planning Commission, or the District Commissioners acted for ulterior purposes or from malice toward this or any other property owner.

E. THE ACT PROPERLY STATES THE PURPOSES OF THE ACQUISITION AND DELEGATES TO THE ADMINISTRATIVE AUTHORITIES THE DETAILS OF SELECTION OF PARTICULAR PROPERTIES TO BE ACQUIRED TO SERVE THOSE AIMS

1. Appellants challenge the adequacy of the Act's standards for guiding administrative action (App. Br. 13–16), and the court below likewise made some observations on that subject (R. 69). But we are not dealing here with a regulatory statute. No problem of delegation of discretion

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[17] Of interest in this connection is the opinion in *United States* v. *40.75 Acres of Land*, 76 F. Supp. 239, 247–249 (N. D. Ill.), tracing the relatively recent origin of the qualification expressed by some courts.

to make laws or impose penalties is involved. Cf. *Schechter Corp.* v. *United States*, 295 U. S. 495, 538–539. Congress exercised its appropriate function when it determined the purposes for which the power of eminent domain is to be exercised. That the subsidiary question whether particular property is needed to execute that purpose is called a legislative, rather than a judicial, issue does not mean that it is a law-making function which must be performed by Congress itself. Such details in execution of the purpose stated by Congress have been delegated in the most general terms at least since the Act of August 1, 1888, 25 Stat. 357, 40 U. S. C. 257, authorizing condemnation whenever the Secretary of the Treasury or other government officer is empowered to acquire land for public purposes. The authority to acquire land has been expressed by Congress in a wide variety of statutes, with numerous variations as to the amount of discretion vested in administrative officers to select the particular properties. At times, it has been given in statutes appropriating funds for particular purposes. *United States* v. *Advertising Checking Bureau*, 204 F. 2d 770 (C. A. 7); *Polson Logging Co.* v. *United States*, 160 F. 2d 712 (C. A. 9); *United States* v. *Threlkeld*, 72 F. 2d 464 (C. A. 10), certiorari denied, 293 U. S. 620. Thus, the broad delegation to the President of the authority to select the projects to be carried out under the National Industrial Recovery Act was not a dele-

gation of power to make law. *United States* v. *Dieckmann*, 101 F. 2d 421, 425 (C. A. 7), and cases there cited. The question here is similar to that when an appropriation act is attacked as constituting an unlawful delegation of legislative power. Only the most general standards are needed to guide the spending of public money. "That Congress has wide discretion in the matter of prescribing details of expenditures for which it appropriates must, of course, be plain." *Cincinnati Soap Co.* v. *United States*, 301 U. S. 308, 321–322. A similarly broad criterion should be all that is required to direct the exercise of condemnation authority.

2. Even if the stricter rule applicable to regulatory legislation were to govern, the Redevelopment Act would easily survive the test. Section 2 contains a policy declaration referring to "substandard housing and blighted areas," to the "use of buildings in alleys as dwellings for human habitation," to injuries to "public health, safety, morals, and welfare," to "the discontinuance of the use for human habitation in the District of Columbia of substandard dwellings and of buildings in alleys and blighted areas," to "the sound replanning and redevelopment of an obsolescent or obsolescing portion" of the District of Columbia, and to "comprehensive and coordinated planning" of the District. Section 3 ("Definitions") contains further guides, as do the operative provisions of the Act (e. g., Sections 5, 6, 7, 11).

These factors furnish standards comparable to many of the regulatory statutes which this Court has upheld. See, e. g., *Lichter* v. *United States*, 334 U. S. 742, 785–786. The district court and appellants complain, however, that they do not know what a "blighted" area is. But if the content of this general criterion cannot be gathered from the remainder of the Act and its history (as we believe to be the case), surely there are sufficient pointers to its meaning in the comparable provisions of the 38 state and territorial redevelopment statutes.[18] Cf. *Fahey* v. *Mallonee*, 332 U. S. 245, 250–253. With that background, the purposes and limits of Congressional action become clear beyond debate. The state courts have sustained their redevelopment statutes against similar attacks on the standards announced by the various legislatures. See *Gohld Realty Co.* v. *City of Hartford*, 104 A. 2d 365, 371–2 (Conn.); *Velishka* v. *City of Nashua*, 106 A. 2d 571, 575 (N. H.); *Belovsky* v. *Redevelopment Authority*, 357 Pa. 329, 342, 54 A. 2d 277, 283; *Herzinger* v. *Mayor & City Council of Baltimore*, 203 Md. 49, 98 A. 2d 87, 93; *Kaskel* v. *Impelliteri*, 306 N. Y. 73, 115 N. E. 2d 659; *Crommett* v. *City of Portland*, Sup. Jud. Ct. of Maine (Sept. 3, 1954); *State on Inf. of Dalton* v. *Land Clearance for Redevelopment Authority*, 270 S. W. 2d 44, 54–56 (Mo.).

[18] We also agree with the additional discussion of this point in the brief submitted on behalf of the Commissioners of the District of Columbia.

CONCLUSION

For the foregoing reasons, it is submitted that the judgment appealed from should be affirmed.

Respectfully submitted.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1954

SAMUEL BERMAN AND SOLOMON H. FELDMAN, EXECUTORS OF THE ESTATE OF MAX R. MORRIS, DECEASED, *Appellants*,

v.

ANDREW PARKER, ET AL., *Appellees*.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

BRIEF FOR RENAH F. CAMALIER AND LOUIS W. PRENTISS, COMMISSIONERS OF THE DISTRICT OF COLUMBIA, APPELLEES.

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INDEX

Subject Index

	Page
Preliminary statement	1
Supplement to Statement of the Case	2
Argument	4
Conclusion	15

Cases Cited

American Power and Light Company v. *Securities & Exchange Commission*, 329 U.S. 90	13
American Wood Products Co. v. *Minneapolis*, 35 F. 2d 657, 661	14
Barnes v. *District of Columbia*, 91 U.S. 540	5
District of Columbia v. *John R. Thompson Company, Inc.*, 346 U.S. 100, 109	6
Field v. *Clark*, 143 U.S. 649	10
J. W. Hampton, Jr. and Co. v. *United States*, 276 U.S. 394	10
LaForest v. *Board of Commissioners*, 67 App. D.C. 396, 92 F. 2d 547, cert. den. 302 U.S. 760	9
Leventhal v. *District of Columbia*, 69 App. D.C. 229, 230, 100 F. 2d 94	14
L'Hote v. *New Orleans*, 177 U.S. 587, 597	14
Lichter v. *United States*, 334 U.S. 742, 785	13
Metropolitan Railroad Company v. *District of Columbia*, 132 U.S. 1, 8	6
O'Donoghue v. *United States*, 289 U.S. 516, 538	4
Opp Cotton Mills, Inc. v. *Administrator*, 312 U.S. 126	11
Schechter Poultry Co. v. *United States*, 295 U.S. 495	8
St. Lo Construction Co. v. *Koenigsberger*, 84 U.S. App. D.C. 319, 322, 174 F. 2d 25, cert. den. 338 U.S. 821	14
Sunshine Anthracite Coal Co. v. *Adkins*, 310 U.S. 381	11
United States v. *Smith*, 5 Wheat. (18 U.S.) 153	8
Western Union Telegraph Co. v. *Lenroot*, 323 U.S. 490	8
Yakus v. *United States*, 321 U.S. 414	12

Other Authorities Cited

City and Regional Planning Papers, Bettman, Harvard University Press, 1946, Chapter 21, page 123	7
Webster's New International Dictionary, 2d Ed., page 2370	8

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PRELIMINARY STATEMENT

Appellees Renah F. Camalier and Louis W. Prentiss concur in and therefore hereby adopt as part of their brief by reference the brief filed herein by appellees District of Columbia Redevelopment Land Agency and National Capital Planning Commission.

These appellees deem it not inappropriate, however, for purposes of emphasis, to set forth by way of supplement to

said brief of appellees District of Columbia Redevelopment Land Agency and the National Capital Planning Commission, the following matter which they feel is important and might be of some aid to the Court in resolving the case at bar:

SUPPLEMENT TO STATEMENT OF THE CASE

In addition to the matter set forth in the statement of the case in the brief for the Redevelopment Land Agency and the National Capital Planning Commission, these appellees add the following:

In the affidavit of the Director of Public Health for the District of Columbia, in referring to the area in question, he stated, *inter alia*, that:

> "The most important considerations from a public health standpoint insofar as the redevelopment of the existing slum area is concerned are the following:
>
> 1. The need for the replacement of dilapidated, substandard, and worn out dwellings.
>
> 2. The need for providing adequate sanitary facilities for all dwellings.
>
> 3. The need for reducing area crowding and building crowding to the extent that all persons and particularly children will have adequate light and air.
>
> 4. The need to remove fundamental deficiencies which create harmful conditions and/or provide the sources from which pestilence and disease originate.
>
> 5. The desirability of a planned community which will provide the necessary space for healthful living in hygienic surroundings.
>
> In the redevelopment of a specific area the failure to take all of the properties would jeopardize the fulfillment of these fundamental purposes. Specifically, the failure to include all structures could nullify the community plan to the extent that the

> greatest benefits to the most people might not be achieved. Few if any buildings in slum areas have the necessary requisites of light, air, and sanitary facilities to make them comparable to new structures. In the years ahead such old buildings if left in redeveloped areas would become obsolete long before the general area and by reason of such obsolescence would become sore spots in the new community thereby providing the foci of new slums and the health dangers to be associated with them." (R. 11, 12)

Dr. Seckinger characterized a slum area as one lacking in those things that go to make up a good community, containing alleys in which people reside, overcrowded, lacking adequate living space, light and air. He said that the buildings are worn-out and dilapidated and do not have proper sanitary facilities, that insects and rodents run rampant, encouraging the spread of disease through the area and adjacent communities (R. 10, 11). Dr. Seckinger proved convincingly, by comparing the census figures for the area including Project Area "B" and the figures for the District of Columbia as a whole, that death rates from tuberculosis, syphillis, and other diseases in Project Area "B" far exceed, and in fact were for the most part in excess of twice as heavy as those for the city in general (R. 44).

In his affidavit, the Executive Director of, and Secretary to, the Board of Directors of the District of Columbia Redevelopment Land Agency, referred to the slum conditions of the area, saying that:

> "The conditions of slum and blight shown so clearly by the survey using the American Public Health Association appraisal technique are emphasized and supported by the attached affidavit by Dr. Daniel Seckinger, Director of Health of the District of Columbia. (Exhibit 6). Dr. Seck-

> inger's affidavit demonstrates the intimate relationship between conditions of slum and blight in the Project Area and health, crime and juvenile delinquency." (R. 20)

The record discloses that at the hearing referred to in the brief for the Redevelopment Land Agency, et al., the testimony of 50 persons, groups and organizations present was predominantly in favor of carrying out the plan for Project Area "B", and that all persons or groups present at the hearing who requested to be heard were given a full opportunity to express their views by the Commissioners of the District of Columbia. It was not until after conducting such public hearing and considering the testimony presented, of course, that the Commissioners approved the plan (R. 21).

ARGUMENT

These appellees will devote this portion of their brief to a subject which the appellants refer to as "an unconstitutional delegation of legislative power because there is an absence of any ascertainable standards for guidance in carrying out its functions" (Appellants' Brief 14).

These appellees concur in the contention made by the Solicitor General that "No problem of delegation of discretion to make laws or impose penalties is involved" (Brief of Land Agency, p. —). But even if this were not so, this Court has held many times that the Federal Congress, in the exercise of the power conferred upon it by Article I, Section 8, Clause 17 of the Constitution of the United States "To exercise exclusive Legislation in all Cases whatsoever, over such District * * * as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States," may delegate certain legislative functions to the Government of the District of Columbia. Thus, this Court declared in *O'Donoghue* v. *United States*, 289 U.S. 516, 538, that:

> "In the District clause, unlike the Territorial clause, there is no mere linking of the legislative processes to the disposal and regulation of the public domain—the landed estates of the sovereign—within which transitory governments to tide over the periods of pupilage may be constituted, but *an unqualified grant of permanent legislative power over a selected area set apart for the enduring purposes of the general government, to which the administration of purely local affairs is obviously subordinate and incidental.* The District is not an 'ephemeral' subdivision of the 'outlying dominion of the United States,' but the capital—the very heart—of the Union itself, to be maintained as the 'permanent' abiding place of all its supreme departments, and within which the immense powers of the general government were destined to be exercised for the great and expanding population of forty-eight states, and for a future immeasurable beyond the prophetic vision of those who designed and created it." (Italics supplied.)

The extent of the power of Congress to delegate authority to the municipal government of the District of Columbia was indicated by this Court in *Barnes* v. *District of Columbia*, 91 U.S. 540. In that case, in holding the District of Columbia liable for acts and omissions of the Board of Public Works created by the same Act which created the Legislative Assembly, this Court said (p. 544):

> "A municipal corporation, in the exercise of all its duties, including those most strictly local or internal, is but a department of the State. The Legislature may give it all the powers such a being is capable of receiving, making it a miniature State within its locality. Again; it may strip it of every power, leaving it a corporation in name only; and it may create and recreate these changes as often as it chooses, or it may itself exercise directly within the locality any or all the powers usually committed to a municipality. We do not regard its acts as some-

> times those of an agency of the State, and at others those of a municipality; but that, its character and nature remaining at all times the same, it is great or small according as the Legislature shall extend or contract the sphere of its action."

In *Metropolitan Railroad Company* v. *District of Columbia*, 132 U.S. 1, 8, this Court again stated the rule that the extent and scope of local legislative power which may be delegated to a municipal government are within the wisdom of the superior Legislature:

> "* * * All municipal governments are but agencies of the superior power of the State or government by which they are constituted, and are invested with only such subordinate powers of local legislation and control as the superior Legislature sees fit to confer upon them. The form of those agencies and the mode of appointing officials to execute them are matters of legislative discretion. * * *"

Indeed, very recently in *District of Columbia* v. *John R. Thompson Company, Inc.*, 346 U.S. 100, 109, this Court stated, *inter alia*, that "It would seem then that on the analogy of the delegation of powers of self-government and home rule both to municipalities and to territories there is no constitutional barrier to the delegation by Congress to the District of Columbia of full legislative power, subject of course to constitutional limitations to which all law making is subservient and subject also to the power of Congress at any time to revise, alter, or revoke the authority granted".

It is clear then that the Congress had full power to delegate such powers it did to the appellees.

But, as these appellees understand the contention of the appellants concerning the delegation of power, they say that the delegation here involved is invalid because "The Redevelopment Act does not contain standards sufficiently

definite to sustain the validity of an authorization for seizing Appellant's property" (Appellants' Brief p. 13). With the foregoing as their major premise, the appellants apparently conclude that the Act is unconstitutional because it contains "no standards" since the terms "slum", "blight" and "other factors" are not defined (Appellants' Brief p. 14).

In this connection the late, eminent planning expert, Alfred Bettman, in referring to the District of Columbia Redevelopment Bill, which later became the Act here involved, said, *inter alia*, that:

> "There are certain premises and assumptions so settled by experience, by legislative determinations, and by judicial decisions that there is no necessity for their lengthy presentation in this memorandum, which is designed to dwell chiefly upon any novel aspects which this particular proposed piece of legislation presents. For instance: blighted districts produce social evils such as disease, vice; they represent and contain very serious economic losses not merely to those who own property in them but also to the whole community as a community, such as excessive operating costs relative to current revenues, capital losses, evidenced by falling tax bases, capital losses due to stagnation in development, contagious spread of the blight; these social and economic losses are universally known and admitted. Owing to the multiplicity of land ownerships and the obsolescense of existing lot layout, the necessity for assembling the lands into project areas, before anything approaching a planned redevelopment can take place, is obvious. The necessity for the exercise of the power of eminent domain to bring about this land assembly must be equally obvious."[1]

It is apparent from the foregoing quotation that to Bettman "blighted districts" embraced those which "produce

[1] City and Regional Planning Papers, Bettman, Harvard University Press, 1946, Chapter 21, page 123.

social evils such as disease, vice" and those that "represent and contain very serious economic losses not merely to those who own property in them but also to the whole community as a community". Such connotation to the word "blighted", these appellees submit, is the meaning generally attributed to it.

Another word which the appellants apparently contend should have been, but was not defined, is the word "slum". That word has a well-known meaning. For example, the word "slum" is defined in Webster's New International Dictionary, 2d Ed., page 2370, as follows:

> "a A thickly-populated street or alley, esp. one marked by squalor, wretched living conditions, or the degradation of its inhabitants. * * *
> b A city district comprising such streets:—usually pl., as, to visit the *slums*."

It is a mere truism that it is not necessary that the legislature artificially define any or all words in a statute. *United States* v. *Smith*, 5 Wheat. (18 U.S.) 153. It is well established law, also, that all words in a statute must be given their general accepted connotation in the absence of any definition in the statute to the contrary. *Western Union Telegraph Co.* v. *Lenroot*, 323 U.S. 490.

Appellants complain that "Nowhere in the Act is there a standard for the factual determination of a blighted area; obsolete lay-out; technological and sociological changes; and other factors. * * * The Redevelopment Act which sets up no standards * * * gives unregulated discretion to the administrative agency and there is an unconstitutional delegation of legislative power because there is an absence of any ascertainable standards for guidance in carrying out its functions." (Appellants' Brief 13, 14). As authority they cite the *Schechter Poultry* case.[2]

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[2] 295 U.S. 495

Appellants' attack on the adequacy of the standards established by Congress in the Act is without merit. The Act contains a multitude of standards and is neither vague nor lacking in specificity. Section 2 of the Act sets forth the general purposes and Section 3 defines many of the terms used. The remaining sections are devoted to organizational, technical and procedural steps to be used in accomplishing the redevelopment. Adequate and specific standards are set out in the following language: "technological and sociological changes", "obsolete lay-out", "substandard housing and blighted areas", "use of buildings in alleys for dwellings for human habitation", "discontinuance of the use for human habitation in the District of Columbia of sub-standard dwelling and of buildings in alleys and blighted areas", "sub-standard housing conditions and the communities in the inhabitated alleys and blighted areas", "to modernize the planning and development of such portions", "sound replanning and redevelopment of an obsolescent or obsolescing portion of such District", "comprehensive planning and replanning", "lack of sanitary facilities, ventilation or light", "dilapidation, overcrowding, faulty interior arrangements" and "detrimental to the safety, health, morals, or welfare of the inhabitants". These words and phrases in the Act are "Standards".

A similar argument was made in the case of *LaForest* v. *Board of Commissioners*, 67 App. D.C. 396, 92 F. 2d 547, cert. den. 302 U.S. 760, where the United States Court of Appeals for the District of Columbia said:

> "We are, therefore, of opinion that the action of the Commissioners in suspending petitioner's permit was not based upon illegally delegated power, and there is nothing in Thompson v. Smith, 155 Va. 367, 154 S.E. 579, 71 A.L.R. 604, or in Panama Refining Co. v. Ryan, 293 U.S. 388, 55 S.Ct. 241, 79 L. Ed. 446, or Schechter Poultry Co. v. United States, 295 U.S. 495, 55 S.Ct. 837, 79 L.Ed. 1570, 97 A.L.R.

947, which in our view affects the question. The Virginia case involved a statute manifestly different from that we have to deal with, but even if this were not true we should not be persuaded by anything in the opinion to change our view. The question is one as to which each state must decide for itself. The Panama and Schechter Cases involved wholly a controversy as to the distribution of power between the President and Congress or between Congress and administrative officers and commissions,—a controversy affecting the structure of the national government. Here the question is purely local. Congress as to the District of Columbia has express power to exercise exclusive legislation in all cases whatsoever, thus possessing the combined powers of a general and a state government in all cases where legislation is possible. *When and how it shall delegate or distribute authority to make detailed regulations under the police power are questions which Congress may determine for itself.* Cf. Highland Farms Dairy, Inc. v. Agnew, 300 U.S. 608, 57 S.Ct. 549, 81 L.Ed. 835, decided by the Supreme Court March 29, 1937." (Italics supplied).

As early as 1891, this Court rejected the argument that a Act of Congress was unconstitutional because it constituted an unlawful delegation of legislative authority. In *Field* v. *Clark*, 143 U.S. 649, this Court held that while the Legislature cannot delegate its power to make a law, it can make a law to delegate a power to determine some fact or state of things upon which the law makes, or intends to make, its own action depend.

See also *J. W. Hampton, Jr. and Co.* v. *United States*, 276 U.S. 394, where the Court said:

> "* * * If Congress shall lay down by legislative act an intelligible principle to which the person or body authorized to fix such rates is directed to conform, such legislative action is not a forbidden delegation of legislative power. * * *"

More recently, this Court has had the problem of delegation of legislative power and adequate standards before it many times. In *Sunshine Anthracite Coal Co.* v. *Adkins*, 310 U.S. 381, this Court said:

> "* * * The standards which Congress has provided here far exceed in specificity others which have been sustained. Certainly in the hands of experts the criteria which Congress has supplied are wholly adequate for carrying out the general policy and purpose of the Act. To require more would be to insist on a degree of exactitude which not only lacks legal necessity but which does not comport with the requirements of the administrative process. Delegation by Congress has long been recognized as necessary in order that the exertion of legislative power does not become a futility. *Currin* v. *Wallace*, 306 U.S. 1, 15 and cases cited. But the effectiveness of both the legislative and administrative processes would become endangered if Congress were under the constitutional compulsion of filling in the details beyond the liberal prescription here. Then the burdens of minutiae would be apt to clog the administration of the law and deprive the agency of that flexibility and dispatch which are its salient virtues. For these reasons we hold that the standards with which Congress has supplied the Commission are plainly valid. *United States* v. *Rock Royal Co-operative, supra.*"

In *Opp Cotton Mills, Inc.* v. *Administrator*, 312 U.S. 126, this Court again had occasion to discuss this problem at length. There, the Court said:

> "* * * The Constitution, viewed as a continuously operative charter of government, is not to be interpreted as demanding the impossible or the impracticable. The essentials of the legislative function are the determination of the legislative

policy and its formulation as a rule of conduct. Those essentials are preserved when Congress specifies the basic conclusions of fact upon ascertainment of which, from relevant data by a designated administrative agency, it ordains that its statutory command is to be effective."

Shortly thereafter, this Court had occasion to discuss this problem when it affirmed the constitutionality of the Emergency Price Control Act in the case of *Yakus* v. *United States*, 321 U.S. 414, where it was said:

"The Constitution as a continuously operative charter of government does not demand the impossible or the impracticable. It does not require that Congress find for itself every fact upon which it desires to base legislative action or that it make for itself detailed determinations which it has declared to be prerequisite to the application of the legislative policy to particular facts and circumstances impossible for Congress itself properly to investigate. The essentials of the legislative function are the determination of the legislative policy and its formulation and promulgation as a defined and binding rule of conduct—here the rule, with penal sanctions, that prices shall not be greater than those fixed by maximum price regulations which conform to standards and will tend to further the policy which Congress has established. These essentials are preserved when Congress has specified the basic conditions of fact upon whose existence or occurrence, ascertained from relevant data by a designated administrative agency, it directs that its statutory command shall be effective. It is no objection that the determination of facts and the inferences to be drawn from them in the light of the statutory standards and declaration of policy call for the exercise of judgment, and for the formulation of subsidiary administrative policy within the prescribed statutory framework. * * *"

In *American Power & Light Company* v. *Securities and Exchange Commission*, 329 U.S. 90, this Court upheld the constitutionality of an act, viz., the Public Utility Holding Company Act, against an attack that Congress in the Act delegated authority to the administrative agency in standards that were too broad. This Court took occasion to explain why, as a practical matter, such delegation is valid, saying:

> "* * * The legislative process would frequently bog down if Congress were constitutionally required to appraise beforehand the myriad situations to which it wishes a particular policy to be applied and to formulate specific rules for each situation. Necessity therefore fixes a point beyond which it is unreasonable and impracticable to compel Congress to prescribe detailed rules; it then becomes constitutionally sufficient if Congress clearly delineates the general policy, the public agency which is to apply it, and the boundaries of this delegated authority. Private rights are protected by access to the courts to test the application of the policy in the light of these legislative declarations. Such is the situation here."

See also to the same effect *Lichter* v. *United States*, 334 U.S. 742, 785.

Appellants also say that the Act, as put into effect through Project Area "B" is unconstitutional because the boundary line of said Project Area "B" is arbitrary in that it includes their property for condemnation and excludes therefrom adjacent property and property in the same block across the street (Appellants' Brief 14). This Court has recognized, as a general principle, that, of necessity, in zoning, condemnation and similar matters, a line of demarkation must be fixed, and that the fixing thereof does not, per se, render the administrative or legislative action

so arbitrary or discriminatory as to be unconstitutional. For example, in *L'Hote* v. *New Orleans*, 177 U.S. 587, 597, this Court said that:

> "* * * The power to prescribe a limitation carries with it the power to discriminate against one citizen and in favor of another. Some must suffer by the establishment of any territorial boundaries. We do not question what is so earnestly said by counsel for plaintiffs in error in respect to the disagreeable results from the neighborhood of such houses and people; but if the power to prescribe territorial limits exists, the courts cannot say that the limits shall be other than those the legislative body prescribes. If these limits hurt the present plaintiffs in error, other limits would hurt others. But clearly the inquiry as to the reasonableness or propriety of the limits is a matter for legislative consideration, and cannot become the basis of judicial action. * * *"

To the same effect, *Leventhal* v. *District of Columbia*, 69 App. D.C. 229, 230, 100 F. 2d 94; *St. Lo Construction Co.* v. *Koenigsberger*, 84 U.S. App. D.C. 319, 322, 174 F. 2d 25, cert. den. 338 U.S. 821; *American Wood Products Co.* v. *Minneapolis*, 35 F. 2d 657, 661.

CONCLUSION

The Redevelopment Act is constitutional. In enacting it, the Congress did not delegate any legislative power to make a law or impose penalties. All that the Congress did was to leave to administrative officials power to ascertain certain facts necessary to effectuate the Act.

A Legislature is not required to define with specificity all critical words in a statute. In interpreting the statute in question, those undefined words and phrases which have

commonly accepted connotations must be given such commonly accepted meanings.

The Act, being designed to correct an evil, recognized by Congress itself, should not be limited or restricted in its application.

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In the Supreme Court of the United States

October Term, 1964

SAMUEL ESTREICH AND SOLOMON A. FELDMAN, EXECUTORS OF THE ESTATE OF MAY R. MORRIS, DECEASED, APPELLANTS

v.

ANDREW PARKER, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

SUPPLEMENTAL BRIEF FOR THE DISTRICT OF COLUMBIA REDEVELOPMENT LAND AGENCY AND NATIONAL CAPITAL PLANNING COMMISSION

[redacted]

CITATIONS

Crommett, et als., **Phillis H.** v. *City of Portland, et als.*, Sup. Jud. Ct. of Maine 2, 4

David Jeffrey Co. v. *City of Milwaukee*, Sup. Ct. of Wisc. 2, 41

Papadinis, Hrisantry J. v. *City of Somerville, et al.*, Sup. Jud. Ct. of Mass. 2, 31

People ex rel., John Gutknecht, State's Attorney v. *City of Chicago, et al.*, Sup. Ct. of Ill. 2, 56

Zisook, David, et al. v. *Maryland-Drexel Neighborhood Redevelopment Corporation, et al.*, Sup. Ct. of Ill. 2, 103

In the Supreme Court of the United States

OCTOBER TERM, 1954

No. 22

SAMUEL BERMAN AND SOLOMON H. FELDMAN, EXECUTORS OF THE ESTATE OF MAX R. MORRIS, DECEASED, APPELLANTS

v.

ANDREW PARKER, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

SUPPLEMENTAL BRIEF FOR THE DISTRICT OF COLUMBIA REDEVELOPMENT LAND AGENCY AND NATIONAL CAPITAL PLANNING COMMISSION

This supplemental brief is filed, pursuant to Rule 41(5) of the Rules of this Court, in order to present several decisions which were announced too late for inclusion in the Government's brief in chief. Since that brief was filed, the highest courts

of Massachusetts and Wisconsin have upheld the redevelopment laws of those states. *Papadinis* v. *City of Somerville*, Sup. Jud. Ct. of Mass., decided September 21, 1954; *David Jeffrey Co.* v. *City of Milwaukee*, Sup. Ct. of Wisc., decided October 6, 1954. The Supreme Court of Illinois has also handed down two decisions upholding the Urban Community Conservation Act of Illinois and the 1953 Amendments to the Illinois Neighborhood Redevelopment Corporation Law. *People ex rel. Gutknecht* v. *City of Chicago, and Tisook* v. *Maryland-Drexel Neighborhood Redevelopment Corp.*, Sup. Ct. of Ill., both decided September 23, 1954. These four opinions, not referred to in our main brief and not yet reported, are reprinted in the Appendix, *infra*. (We also reprint the opinion in the Maine case of *Crommett* v. *City of Portland*, Sup. Jud. Ct. of Me., decided September 3, 1954 (which is referred to in our main brief) because it has not yet been reported).

At the present time, therefore, the courts of *twenty* states have authoritatively upheld their respective redevelopment statutes.*

Respectfully submitted,

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OCTOBER TERM, 1954.

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* This includes the *seventeen* states mentioned at page 16 of our main brief, California (in which the statute was upheld by the District Court of Appeals and the Supreme Court of California denied a hearing), Massachusetts, and Wisconsin.

The California case (incorrectly named in our main brief, fn. 5, p. 17) is *Redevelopment Agency of City and County of San Francisco* v. *Hayes*, 122 Cal. App. 2d 836, 266 P. 2d 105; it is now pending before this Court on petition for a writ of certiorari *sub nom. Van Hoff* v. *Redevelopment Agency of City and County of San Francisco*, No. 87, this Term.

APPENDIX

SUPREME JUDICIAL COURT OF MAINE

September 3, 1954

PHILLIS H. CROMMETT, ET ALS.

v.

CITY OF PORTLAND, ET ALS.

RESCRIPT

WILLIAMSON, J.

On report upon an agreed statement of facts. This is a bill in equity to test the constitutionality of the "Slum Clearance and Redevelopment Authority Law." P. & S. L. 1951, c. 217, sometimes hereinafter referred to as the "Act" or the "1951 Act."

The plaintiffs are ten taxable inhabitants of the City of Portland and bring the bill under R. S. c. 95, s. 4, V XIII (1944). The defendants are the City of Portland, the members of the City Council, the City Treasurer, and five persons "in their purported capacity as Commissioners of the Slum Clearance and Redevelopment Authority."

The plaintiffs in substance seek to restrain and enjoin: (1) payment of $60,000 by the city to the Authority, and (2) the "purported" commissioners from accepting payments from the city and from exercising any powers under the 1951 Act. Further, the plaintiffs pray that the Court decree that

the resolution of the City Council creating the Slum Clearance and Redevelopment Authority and the council order authorizing the $60,000 payment are "illegal and invalid and that (the 1951 Act) is unconstitutional and void and in violation of the Constitution of this State."

A temporary injunction issued and is now in effect. At the hearing on the bill as amended, answer, replication, and an agreed statement of facts, the justice presiding, with the consent of the parties, reported the case to the Law Court for hearing and decision.

The issues are set forth by the plaintiffs in their bill as follows:

> "FOURTEENTH: That Chapter 217 of the Private and Special Laws of Maine, 1951, is unconstitutional and void for the following reasons: (1) it authorizes the taking of private property for private use, in violation of Article I, Section 21 of the Constitution of the State of Maine and the Fourteenth Amendment to the Constitution of the United States; (2) it authorizes an unconstitutional delegation of legislative power, in violation of Article III, Sections 1 and 2, Article IV, Part First, Section 1, and Article IV, Part Third, Section 1, of the Constitution of the State of Maine; (3) it authorizes the loan of the credit of the State, in violation of Article IX, Section 14 of the Constitution of the State of Maine, and (4) it authorizes the expenditure of public funds for

a private use contrary to the law of the State of Maine."

The pertinent constitutional provisions read:

"Private property shall not be taken for public uses without just compensation; nor unless the public exigencies require it."
Maine Const. Art. 1, s. 21.

"The legislature...shall have full power to make and establish all reasonable laws and regulations for the defense and benefit of the people of this state, not repugnant to this constitution, nor to that of the United States."
Maine Const. Art. IV, Part Third, Section 1.

"...nor shall any State deprive any person of life, liberty, or property, without due process of law;..."
U. S. Const. Amend. XIV.

In considering in detail the 1951 Act and the facts in the instant case, it will be helpful to keep in mind the basic purposes and methods of the slum clearance and redevelopment program well stated in the following words:

"In essence, redevelopment contemplates the acquisition of a slum, blighted or deteriorating area selected in accordance with a general city or town plan, clearing, replanning and making the area available by sale or lease to private and public sources for redevelopment pursuant to a predetermined plan. Since the lo-

cal agency will suffer a loss in acquiring, clearing and replanning the area for its new uses, federal grants are available to help meet the deficit, with the Federal Government absorbing two thirds of the loss. As in the case of local annual contributions required under the United States Housing Act, the local contribution may be and undoubtedly will be in forms other than cash."

The Federal Government and Housing (1952) Wis. L. Rev. 581, 609.

We summarize the 1951 Act and set forth the provisions in which we are particularly interested.

"Section 2. *Findings and declarations of necessity.* It is hereby found and declared that there exist in the city of Portland slum and blighted areas (as herein defined) which constitute a serious and growing menace, injurious and inimical to the public health, safety, morals and welfare of the residents of said city of Portland; that the existence of such areas contributes substantially and increasingly to the spread of disease and crime, necessitating excessive and disproportionate expenditures of public funds for the preservation of the public health and safety, for crime prevention, correction, prosecution, punishment and the treatment of juvenile delinquency and for the maintenance of adequate police, fire and accident protection and other public serv-

ices and facilities; that such areas constitute an economic and social liability, substantially impair or arrest the sound growth of said city of Portland; that this menace is beyond remedy and control solely by regulatory process in the exercise of the police power and can not be dealt with effectively by the ordinary operations of private enterprise without the aids herein provided; that the elimination of slum conditions or conditions of blight, the acquisition and preparation of land in or necessary to the development of slum or blighted areas and its sale or lease for development or redevelopment in accordance with the master plan and redevelopment plans of said city of Portland and any assistance which may be given by any state public body in connection therewith, are public uses and purposes for which public money may be expended and private property acquired; and that the necessity in the public interest for the provisions hereinafter enacted is hereby declared as a matter of legislative determination."

"Section 3. *Definitions.*

"(g) 'Blighted area' shall mean:

"1. An area in which there is a predominance of buildings or improvements which, by reason of dilapidation, deterioration, age, or obsolescence; or inadequate provision for ventilation,

light, air, sanitation or open spaces; or high density of population and overcrowding; or the existence of conditions which endanger life or property by fire and other causes; or any combination of such factors, is conducive to ill health, or transmission of disease, or infant mortality, or juvenile delinquency and crime, and is detrimental to the public health, safety, morals or welfare.

"2. An area which, by reason of the predominance of defective or inadequate street layout; or faulty lot layout in relation to size, adequacy, accessibility or usefulness; or insanitary or unsafe conditions; or deterioration of site or other improvements; or diversity of ownership, tax or special assessment delinquency exceeding the fair value of the land, defective or unusual conditions of title; or improper subdivision or obsolete platting; or mixture of incompatible land uses; or the existence of conditions which endanger life or property by fire and other causes; or any combination of such factors, substantially impairs or arrests the sound growth of the municipality, or constitutes an economic or social liability and is a menace to the public health, safety, morals or welfare in its present condition and use.

"(h) 'Slum area' shall mean a blighted area in an extreme state of deterioration and decay.

"(i) 'Redevelopment project' shall mean any work or undertaking:

"(1) To acquire slum areas or blighted areas or portions thereof, including land, structures or improvements not in themselves deteriorated, the acquisition of which is necessary or incidental to the proper clearance, development or redevelopment of such slum or blighted areas or to the prevention of the spread or recurrence of slum conditions or conditions of blight;

"(2) To clear any such areas by demolition or removal of existing buildings, structures, streets, utilities, or other improvements thereon, and to install, construct or reconstruct streets, utilities and site improvements essential to the preparation of sites for uses in accordance with a redevelopment plan.

"(3) To sell, lease or otherwise make available land in such areas for residential, recreational, commercial, industrial or other use or for public use, except for public housing, or to retain such land for public use, except for public housing in accordance with a redevelopment plan. Public housing shall mean housing erected by a local housing authority in accordance with chapter 441 of the public laws of 1949.

"The term 'redevelopment project' may also include the preparation of a redevelopment plan, the planning, survey and other work incident to a redevelopment project and the prep-

aration of all plans and arrangements for carrying out a redevelopment project."

"Section 4. *Creation of slum clearance and redevelopment authority.*"

"Section 5. *Powers of the Authority.*

"The Authority shall constitute a public body corporate and politic, exercising public and essential governmental functions, and having all the powers necessary to carry out and effectuate the purposes and provisions of this law, including the following powers in addition to others herein granted;

"(d) . . . to enter into contracts with redevelopers of property containing covenants, restrictions and conditions regarding the use of such property for residential, commercial, industrial, recreational purposes or for public purposes in accordance with the redevelopment plan and such other covenants, restrictions, and conditions as the Authority may deem necessary to prevent a recurrence of slum or blighted areas or to effectuate the purposes of this law; . . .

"(i) To prepare plans and provide reasonable assistance for the relocation of families displaced from a redevelopment project area to permit the carrying out of the redevelopment project, to the extent essential for acquiring possession of and clearing such area or parts thereof."

"Section 6. *Preparation and approval of redevelopment plans.*"

"Section 7. *Disposal of property in redevelopment project.*

"(a) The Authority may sell, lease, exchange or otherwise transfer real property or any interest therein in a redevelopment project area to any redeveloper for residential, recreational, commercial, industrial or other uses or for public use in accordance with the redevelopment plan, subject to such covenants, conditions and restrictions as it may deem to be in the public interest or to carry out the purposes of this law; provided that such sale, lease, exchange or other transfer, and any agreement relating thereto, may be made only after, or subject to, the approval of the redevelopment plan by the city council. Such real property shall be sold, leased or transferred at its fair value for uses in accordance with the redevelopment plan, notwithstanding such value may be less than the cost of acquiring and preparing such property for redevelopment. In determining the fair value of real property for uses in accordance with the redevelopment plan, the Authority shall take into account and give consideration to the uses and purposes required by such plan, the restrictions upon, and the covenants, conditions and obligations assumed by the redeveloper of such property; the objectives of the redevelopment plan for the prevention of the

recurrence of slum or blighted areas; and such other matters as the Authority shall specify as being appropriate. In fixing rentals and selling prices, the Authority shall give consideration to appraisals of the property for such uses made by land experts employed by the Authority."

"Section 8. *Eminent Domain.*

The Authority shall have the right to acquire all or any part of the real property, or any interest therein, within the redevelopment project area, by the exercise of the power of eminent domain, whenever it shall be judged by the Authority that the acquisition of said real property or the interest therein is in the public interest and necessary for the public use.

"(a) The necessity for such acquisition shall be conclusively presumed upon the adoption by the Authority of a resolution declaring that the acquisition of the real property, or interest therein, described in such resolution is in the public interest and necessary for the public use and that such real property, or interest therein, is included in an approved redevelopment project under this law. . . ."

"Section 9. *Acquisition and development of undeveloped vacant land.*

"Upon a determination by resolution of the city council that the acquisition and development

of undeveloped vacant land, not within a slum or blighted area, is essential to the proper clearance or redevelopment of slum or blighted areas or a necessary part of the general slum clearance program of the city of Portland, the acquisition, planning, preparation for development or disposal of such land shall constitute a redevelopment project which may be undertaken by the Authority in the manner provided in the foregoing sections. The determination by the city council shall not be made until the city council finds that there is a shortage of decent, safe and sanitary housing in the city of Portland; that such undeveloped vacant land will be developed for predominantly residential uses; and that the provision of dwelling accommodations on such undeveloped vacant land is necessary to accomplish the relocation in decent, safe and sanitary housing in said city of families to be displaced from slum or blighted areas which are to be redeveloped."

"Section 10. *Issuance of bonds.*

"(b) . . . The bonds and other obligations of the Authority, and such bonds and obligations shall so state on their face, shall not be a debt of the city of Portland nor the state, and neither the city of Portland nor the state shall be liable thereon, nor in any event shall such bonds or obligations be payable out of any funds or properties other than those of said

Authority acquired for the purposes of this law. . . ."

Sections 11, 12, and 13 relate to bonds of the Authority.

"Section 14. *Conveyance to federal government on default.*"

"Section 15. *Property of authority exempt from taxes and from levy and sale by virtue of an execution.*

"(b) . . . provided that with respect to any property in a redevelopment project, the tax exemption provided herein shall terminate when the Authority sells, leases or otherwise disposes of such property to a redeveloper for redevelopment."

"Section 16. *Cooperation by public bodies.*"

"Section 17. *Grant of funds by the city.*

"The city may grant funds to the Authority for the purpose of aiding the Authority in carrying out any of its powers and functions under this law. To obtain funds for this purpose, the city may levy taxes and may issue and sell its bonds. . . ."

"Section 18. *Budget and annual report.*"

"Section 19. *Title of purchaser.*"

"Section 20. *Additional conferred powers.*"

Referendum clause.

From the agreed statement we find:

The 1951 Act was duly accepted by the voters of Portland in December 1951. The City Council in February 1952 declared "'that one or more slum or blighted areas exist . . . and that the redevelopment of such area or areas is necessary in the interest of the public health, safety, morals or welfare of the residents . . .", voted to authorize "a public body corporate and politic to be known as the Slum Clearance and Redevelopment Authority . . .", approved the exercise of the powers granted in the 1951 Act, and appointed Commissioners of the Authority.

It is specifically agreed that "all of the steps required by (the 1951 Act) for the creation of the Slum Clearance and Redevelopment Authority and the entitlement of said Authority to transact business and exercise its powers have been taken and are completed."

Under the Housing Act of 1949 (42 U. S. C. A. s. 1451 et seq.) the Federal Government may "to assist local communities in eliminating their slums and blighted areas and in providing maximum opportunity for the redevelopment of project areas by private enterprise, make temporary and definitive loans to local public agencies for the undertaking of projects for the assembly, clearance, preparation, and sale and lease of land for redevelopment." Capital grants may also be made to enable the local "agencies to make land in project areas available for redevelopment at its fair value for the uses specified in the redevelopment plans; . . ."

The Federal Government has reserved $395,000 for capital grants in Portland, has advanced $14,787 used by the Authority in preparation of preliminary plans and surveys leading to the selection of a project area, designated as the Vine-Deer-Chatham Project Area, and has allocated to the Authority $14,427 for preparation of final plans and surveys of the project.

The capital grant, we read in the agreed statement, "will be in an amount not exceeding two-thirds of the net cost of redeveloping the project provided that the City of Portland will provide the remaining one-third net cost by the provision of 'local grants-in-aid', which may be in the form of (1) cash grants, (2) donations of land and demolition or removal of site improvements, and (3) the provision of parks, playgrounds and public buildings or facilities necessary to support the new uses of the land in said project area in accordance with the redevelopment plan, and that in connection with said Vine-Deer-Chatham project the City of Portland will provide specific 'local grants-in-aid' in the form of cash, donation of land, and certain site improvements, and said City has appropriated a sum of Sixty Thousand ($60,000.00) Dollars as a local cash 'grants-in-aid.' "

After stating findings upon the physical characteristics of the project area "of 5.49 acres which is predominately residential but contains some commercial and industrial uses and some vacant land" disclosed in "recent extensive surveys", the agreement of facts continues with a comparison in recent

periods of certain conditions within the area and within the entire city. The rate is given here for the area in terms of the city average: juvenile delinquency 4.2; tuberculosis 2.3; arrests for drunkenness 3.6; fires 4.4; social welfare contacts 1.5 to 2.7; active recipients of welfare from the city 5.25.

In October 1953 the Authority found, determined and declared the Vine-Deer-Chatham Project Area a blighted area within the 1951 Act.

"That it is the intention of the Slum Clearance and Redevelopment Authority and the City of Portland with the financial assistance of the United States of America to prepare and adopt or cause to be prepared and adopted a redevelopment plan for such project area and (1) to acquire by purchase or eminent domain all of the land, structures, and improvements in the Vine-Deer-Chatham Project Area, including structures and improvements not in themselves deteriorated but excepting certain buildings whose present use conforms to plans for the redevelopment of this area, (2) to clear said Project Area by demolition or removal of existing buildings, structures, streets, utilities and other improvements thereon, and to install, construct and reconstruct streets, utilities, and site improvements considered essential to the preparation of sites for uses in accordance with a redevelopment plan, and (3) to sell, lease, and otherwise make available to individuals and private or public corporations the land in said project area for commercial, industrial, or other use."

The activities set forth above are necessary for the redevelopment of the project area as contemplated by the Authority and the city. The $60,000 authorized to be paid by the city will constitute a portion of the local grants-in-aid. Unless restrained, the City Treasurer will pay and the Authority will expend the authorized $60,000.

The issue on which the case hinges is whether clearance and redevelopment of the blighted area, known as the Vine-Deer-Chatham Project Area, under the 1951 Act is a *public use* within the meaning of our State constitution. If it is a public use, then the expenditure of public money and the taking by eminent domain are constitutional, otherwise not.

We may at the outset eliminate certain of the issues raised in the fourteenth paragraph of the bill, *supra*.

First: If the proposed action passes the hurdle of the State constitutional provision with respect to eminent domain, we need not consider the 14th Amendment to the Constitution of the United States. We may safely say that the provisions of our state constitution are not of a broader scope than the 14th Amendment. The judgment of the highest court of a state upon what should be deemed a "public use" is entitled to the highest respect. *Jones* v. *City of Portland*, 245 U. S. 217, 221 (1917).

Second: There is no unauthorized delegation of legislative power under the 1951 Act. Assuming the constitutional right in the State to expend

public money and to exercise the right of eminent domain, the Legislature may entrust the power to instruments of its choosing, as here the City of Portland, a municipal corporation, and the Slum Clearance and Redevelopment Authority, "a public body corporate and politic, exercising public and essential governmental functions." Section 5 of 1951 Act. *Riche* v. *Bar Harbor Water Co.*, 75 Me. 91 (1883); *Ulmer* v. *Railroad Co.*, 98 Me. 579, 57 A. 1001, 66 L.R.A. 387 (1904); *Brown* v. *Gerald*, 100 Me. 351, 61 A. 785 (1905); *Hayford* v. *Bangor*, 102 Me. 340, 66 A. 731 (1907); *Bowden* v. *York Shore Water Co.*, 114 Me. 150, 95 A. 779 (1915); *Roberts* v. *Water District*, 124 Me. 63, 126 A. 162 (1924); *Smith* v. *Power Co.*, 125 Me. 238, 132 A. 740 (1926).

Third: The complaint that the 1951 Act authorizes the loan of the credit of the state is answered by the provision of the 1951 Act expressly stating otherwise. See Section 10 of 1951 Act, *supra*.

There are certain basic principles upon which all are agreed. First. Taxation must be for a public purpose or use, i.e., for the "benefit of the people," and a taking by eminent domain "for public uses." Maine Constitution, *supra*.

For our purposes it is unnecessary to distinguish "public use" in taxation from "public use" in eminent domain. The latter has been held to be much more restricted in meaning than the former. *Opinion of Justices*, 118 Me. 503, 513, 106 A. 685 (1919). It is apparent that without the right of eminent do-

main the purposes of the Act cannot be carried out. Accordingly, the constitutionality of the Act may be tested by reference only to the principles of the law of eminent domain. Without eminent domain the Act fails; with it, the public use or purpose of taxation is established. Second: "Whether the public exigency requires the taking of private property for public uses is a legislative question, the determination of which by the legislature is final and conclusive. * * * Whether the use for which such taking is authorized is a public use is a judicial question for the determination of the court." *Kennebec Water District* v. *Waterville*, 96 Me. 234, 241, 52 A. 774, 777 (1902); *Ulmer* v. *Railroad Co., supra*; *Brown* v. *Gerald, supra*. Third: Whether a given use of public moneys is public in nature is a matter for determination by the courts. *Private use*: *Allen* v. *Inhabitants of Jay*, 60 Me. 124 (1871) (loan by town to manufacturing concern); *Brewer Brick Co.* v. *Brewer*, 62 Me. 62 (1873) (exemption of manufacturing plant from taxation). *Public use*: *Laughlin* v. *City of Portland*, 111 Me. 486, 90 A. 318 (1914) (Portland municipal fuel yard); *State of Maine* v. *Vahlsing, Inc.*, 147 Me. 417, 88 A. 2nd 144 (1952) (potato tax). Fourth: There is a strong presumption that a statute is constitutional.

In discussing the power of the Legislature, Justice Thaxter said in *State of Maine* v. *Vahlsing, supra*, at page 430:

> "Unless it has clearly exceeded its constitutional powers in so doing, its action must be

sustained. All rational doubts as to the constitutionality of statutes must be resolved in favor of the constitutionality thereof. Although it is the duty of the court to declare acts which transcend the powers of the legislature void, this judicial duty is one of gravity and delicacy and it is only when there are no rational doubts which may be resolved in favor of the constitutionality of the statute that the inherent power of the court to declare statutes unconstitutional should be exercised."

In the words of Justice, later Chief Justice Cornish, in the *Laughlin* case, *supra*, at page 489:

"The court is bound to assume that, in the passage of any law, the Legislature acted with full knowledge of all constitutional restrictions and intelligently, honestly and discriminatingly decided that they were acting within their constitutional limits and powers. That determination is not to be lightly set aside. It is not enough that the court be of the opinion that had the question been originally submitted to it for decision it might have held the contrary view. The question has been submitted in the first instance to the tribunal designated by the Constitution, the Legislature, and its decision is not to be overturned by the court unless no room is left for rational doubt. All honest and reasonable doubts are to be resolved in favor of the constitutionality of the

act. This healthy doctrine is recognized as the settled policy of this court."

See also *Ulmer* v. *Railroad Co., supra*, and *Morris et al. Pet'rs.* v. *Goss*, 147 Me. 89, 83 A. 2d. 556 (1951).

In applying the principles of law to the situation before us, we must keep in mind that the decisive question turns upon the meaning of "public use."

The Legislature has stated there are two public uses; first, the clearance of the "blighted area" as in the instant case, or the slum, and second, the redevelopment of the cleared area, under restrictions designed to prevent the recurrence of the "blight" or slum. This redevelopment may be accomplished by sale or lease of so much of the redeveloped area for private purposes as may not be utilized for public purposes, such as parks or schools. Section 7(a) of the Act, *supra*.

The clearance of the "blighted area" in our view is the use of property for purposes of public health, morals, safety and welfare. The "public use" within the meaning of our constitution lies in the removal of breeding grounds of disease, juvenile delinquency, and other social evils.

> "The elimination of slums can be found to be a direct benefit and advantage to all of the people, to be a matter not readily approached through private initiative but demanding co-ordinated effort by a single authority, to be in line with the purposes of promoting the

public safety, health and welfare for which the Government of the Commonwealth was established, and to require for its successful accomplishment the exercise of the power of eminent domain. It may well be deemed to rise to the dignity of a public service."

Allydonn Realty Corp. v. *Holyoke Housing Authority*, 304 Mass. 288, 23 N. E. 2d 665 (1939).

With the "public exigencies" we are not as a Court concerned. On this condition upon the exercise of the right to take property by eminent domain, the Legislature has spoken. It has declared in substance that regulatory measures designed to control the use of his property by an individual cannot remedy "the menace", and that the clearance and redevelopment of the infected area is necessary.

There is no element of private use in the removal of the conditions of blight. Great public purposes are thereby served and the entire community will benefit. For the moment we pass the question of redevelopment. If there is a "use" within the constitution the use is "public."

It is not necessary, in our view, that an active use be contemplated in a taking by eminent domain. The use may be negative in character. The prevention of evil may constitute a use, and as here a public use. Land may be taken to protect a public water supply, and so here land may be

taken to protect the community against the destructive forces mentioned.

In determining whether a given use is public in nature, we must consider existing conditions. It was well said in the *Laughlin* case, *supra*, at page 492:

> "* * * What could not be deemed a public use a century ago, may, because of changed economic and industrial conditions, be such today. Laws which were entirely adequate to secure public welfare then may be inadequate to accomplish the same results now."

In the recent case of *State of Maine* v. *Vahlsing, Inc.*, *supra*, Justice Thaxter said, at page 426:

> "Admittedly the line of demarcation between a public and a private use is not always easy to draw. Whether a use is public or private is a question of law for the Court. This question must be determined by the application of established legal principles to the then existing facts."

We find nothing in the opinions of our Court that require us to reach a different result. The principle that "public use" in eminent domain means use by the public, or employment by the public, in contrast with public advantage, is well and firmly established. *Opinion of Justices*, *supra*, at page 514; *Paine* v. *Savage*, 126 Me. 121, 136 A. 664 (1927); *Haley* v. *Davenport et als.*, 132 Me. 148, 168 A. 102 (1933).

In general, our cases deal with whether a proposed active use will be for public or private use. For example, a water storage reservoir to increase value and capacity of water powers, *Opinion of Justices, supra*, at page 508; protection of public water supply, *Bowden* v. *York Shore Water Co., supra;* a private logging road, *Paine* v. *Savage, supra;* a drain across a neighbor's land, *Haley* v. *Davenport, supra.*

The application of the "use or employment by the public" rule is less difficult or at least more readily apparent in cases where there is an active use of the property for a given purpose. If active use by the public in the sense that property of a public utility is so used, is an essential requirement under our constitution for the taking of property by eminent domain, then the State is helpless to take necessary action for purposes of public health, morals, safety or welfare. We do not believe that our constitution has so limited the exercise of proper and necessary governmental functions by the Legislature. To this point, namely, the clearance of the blighted area, we find nothing unconstitutional in the 1951 Act.

The determination of whether an area is "blighted" or "slum" under the statute must rest upon facts directly bearing upon the public health, safety, morals or welfare. Consideration of other facts not so grounded, however, does not affect the validity of the finding, if the pertinent facts are in themselves sufficient to show the "blighted" or "slum" condition. The Vine-Deer-Chatham

Project Area is properly a "blighted area" under this test.

Several of the conditions stated in the statute in Clauses 1 and 2 of Section 3(g), *supra*, and particularly in clause 2, do not in our view touch upon a public use. Examples are found in "faulty lot layout", "deterioration of site", "diversity of ownership", "defective or unusual conditions of title", "improper subdivision or obsolete platting", or "mixture of incompatible land uses." Nor are public uses involved in correcting a condition from which an area "substantially impairs or arrests the sound growth of the municipality, or constitutes an economic or social liability." The public use, as we have said, is found in the course of conditions harmful to the public health, safety, morals or welfare.

Further, we do not in this opinion pass upon the constitutionality of Section 9 of the Act, *supra*, relating to the "Acquisition and development of undeveloped vacant land." Our discussion is confined to the validity of the Act with reference to the action here taken and proposed.

After the clearance of the blighted area, the Authority is faced with the question of its future use. We have seen that the redevelopment of the area, with disposal of parts thereof for private use with restrictions to prevent recurrence of the blight, is a second purpose of the Act. Section 2, *supra*.

Taken alone, the redevelopment of a city is not, in our view, a "public use" for which either taxa-

tion or taking by eminent domain may properly be utilized.

However beneficial it might be in a broad sense, it would clearly be unconstitutional for the Legislature to provide for the taking of any area in a city for the purpose of redevelopment by sale or lease for private purposes. Such a proposal would amount to no more than the taking of A's property for sale or lease to B on the ground that B's use would be economically or socially more desirable.

In the instant case redevelopment of the "blighted area" is, in our view, a secondary or minor purpose. The first and main purpose of the Legislature is not to redevelop Portland, but to clear away blighted areas and slums and to prevent their recurrence. If the only uses for which a blighted area or slum may be put when cleared must be uses public in nature by the test of active employment as, for example, parks, playgrounds, schools, municipal buildings and the like, there would be no occasion whatsoever for the 1951 Act. A taking for such public uses requires no consideration of the problems of the slum or blighted area. In brief, the purpose of redevelopment is not the dominant purpose of the Act. Compare *Opinion of Justices, supra,* at page 513, "The dominant purpose here (water storage reservoir) is for private benefit and not for the 'benefit of the people,' and therefore the power of taxation to promote it does not exist", and *Bowden* v. *York Shore Water Co., supra,* in which it was held the real purpose of the taking was to serve a private use of protec-

tion of timberlands from fire, and not a public use of protection of a public water supply.

Property may be taken "for public uses" to carry out the main purpose of the Legislature under the 1951 Act. And further, the facts show that the City Council and Authority have acted and propose to act in good faith to carry out such main purpose. See *Smith* v. *Power Co., supra.*

Plainly, redevelopment of the area is an essential purpose of the Act. It must be recognized that a large part of the area and perhaps as much as is now in private hands will return to private uses after the cleansing process of removal of the infection. From the disposal of the area to private uses the cost of the project will in part be recouped. The Federal Government, the Authority, and the city all have an interest in the future of the area from the viewpoint of total expense.

There will be, however, in the private uses within the area in the future this significant difference from the past. Under the Act it will be the obligation of the Authority to make suitable provision in disposing of the property for the purpose of preventing a recurrence of the evils eliminated. In a limited sense the *public use* of the area will continue. Private uses will be permitted, but only to the extent the purposes of public health, mofals, safety and welfare benefited by the clearance of the area remain unaffected.

Without question, the Authority will be in the business of selling and leasing real estate within the area for private purposes. This situation arises

only as a result of the public uses for which it acquired and cleared the area. The disposal of the property, particularly in light of required restrictions to prevent the recurrence of the evil conditions, is not an unreasonable method of returning to private use property no longer needed in its entirety by the Authority.

The constitutionality of slum clearance and urban redevelopment statutes alike in principle if not in detail with our 1951 Act is upheld by the great weight of authority in other jurisdictions. Only Florida and Georgia have taken a contrary view.

Typical cases are: *Ajootian* v. *Providence Redevelopment Agency*, 91 A. 2d 21 (R. I. 1952) (two judges dissenting); *Gould Realty Company* v. *City of Hartford, et al.*, 104 A. 2d 365 (Conn. 1954); *Veishka et al.* v. *City of Nashua, et al.*, (N. H. 1954); *Belovsky* v. *Redevelopment Authority of Penna.* 357 Pa. 329, 54 A. 2d 277, 172 A. L. R. 953 (1947); *Schneider* v. *District of Columbia*, 117 Fed. Supp. 705 (D. C. 1953); *Fowler* v. *Housing Authority of Portland*, 198 Ore. 205, 256 P. 2d 752 (1952) (includes citations to cases throughout the country); *Murray* v. *LaGuardia*, 291 N. Y. 320, 52 N. E. 2d 884 (1943) (special constitutional provision). *Contra*: *Housing Authority of City of Atlanta* v. *Johnson*, 209 Ga. 560, 74 S. E. 2d 891 (1953); *Adams* v. *Housing Authority of City of Daytona Beach*, 60 So. 2d 663 (Fla. 1952). Miscellaneous: 29 C. J. S. 823, 850, eminent domain, ss. 31, 64, on public use; 18 Am. Jur. 660 et seq 680, eminent domain, ss. 36 et seq. 51, 52; 2 Nichols on

Eminent Domain, ss. 7.2 (3rd Ed. 1950); 2 Yokley Zoning Law and Practice, s. 196 et seq (1953 Ed.) on urban redevelopment; 28 Tulane L. Rev. 96 (1953) (Public Purpose in Urban Redevelopment); 29 B. U. L. Rev. 318 (1949) (Urban Redevelopment); Summaries of Slum Clearance and Public Housing Decisions, Housing and Home Finance Agency, Office of the Administrator, Division of Law (Oct. 1949 and Second Supplement Jan. 1954).

The attack upon the constitutionality of the Slum Clearance and Redevelopment Authorty Law fails.

Bill dismissed without costs.

HERSANTEY J. PAPADINIS v. CITY OF SOMERVILLE, ET AL.[1]

Supreme Judicial Court of Massachusetts

September 21, 1954

SPALDING, J.

These two cases, which were heard together, present the question of the constitutionality of portions of Part IV (entitled "Land Assembly and Redevelopment Projects") of the housing authority law. G. L. (Ter. Ed.) c. 121 §§ 26JJ to 26MM, as appearing in St. 1946, c. 574, § 1, and as amended by St. 1953, c. 647, § 8. In one, the plaintiff Papadinis under G. L. (Ter. Ed.) c. 231A, in-

[1] The companion case is by Lawrence Ardito and others against the same defendants.

serted by St. 1945, c. 582, § 1, seeks a declaratory decree as to the right of the defendant Somerville Housing Authority, hereinafter called the authority, to take his land by eminent domain. The case was heard on a statement of agreed facts and the judge without decision reported the case. The other case is brought by fifteen taxpayers of the defendant city under G. L. (Ter. Ed.) c. 40, § 53, and seeks to restrain the city from expending public funds under a "cooperation agreement" which the city has entered into with the Authority in connection with a proposed slum clearance project. The defendants demurred and the judge after entering an interlocutory decree sustaining the demurrer reported the case. G. L. (Ter. Ed.) c. 214, § 30.

The facts agreed upon in the *Papadinis* case and those admitted by demurrer in the taxpayers' suit are substantially the same. Both cases arise out of a slum clearance project in the Linwood-Joy area so called, in the city of Somerville. In the *Papadinis* case the plaintiff challenges the constitutionality of the statute on the ground that it authorizes the exercise of the power of eminent domain for a nonpublic purpose. The basis for the attack in the taxpayers' suit is that the statute sanctions the expenditure of public funds for private purposes. The question presented by each case is basically the same, namely, whether the proposed project can be classed as a public use or service. If it cannot be, then under our Constitu-

tion there can be no exercise of either the power of eminent domain or the taxing power. *Lowell* v. *Boston*, 111 Mass. 454, 462. *Allydenn Realty Corp.* v. *Holyoke Housing Authority*, 304 Mass. 288, 292, and cases cited.

Section 26JJ, as amended, of Part IV of the housing authority law, after stating that sub-standard, decadent or blighted open areas exist in certain cities and towns of the Commonwealth and that such areas constitute a serious threat to the safety, health, morals and welfare[1] of the residents of the Commonwealth, then declares that "(T)he redevelopment of land not only in sub-standard areas but also in decadent and blighted open areas in accordance with a comprehensive plan to promote the sound growth of the community is necessary in order to achieve permanent and comprehensive elimination of existing slums and sub-standard conditions and to prevent the recurrence of such slums or conditions or their development in other parts of the community or in other communities;

[1] In amplification of this declaration the statute declares that the existence of these areas "contributes substantially to the spread of disease and crime (necessitating excessive and disproportionate expenditure of public funds for the preservation of the public health and safety, for crime prevention, correction, prosecution, punishment, and the treatment of juvenile delinquency and for the maintenance of adequate police, fire and accident protection and other public services and facilities), constitutes an economic and social liability, substantially impairs or arrests the sound growth of cities and towns . . . retards the provision of housing accommodations . . . (and) decreases the value of private investments and threatens the sources of public revenue and the financial stability of communities."

and that the redevelopment of blighted open areas promotes the clearance of sub-standard and decadent areas and prevents their creation and occurrence; that the menace of such sub-standard, decadent or blighted open areas is beyond remedy and control solely by regulatory process in the exercise of the police power and cannot be dealt with effectively by the ordinary operations of private enterprise without the aids herein provided . . . (and) that a public exigency exists which makes the acquisition, planning, clearance, rehabilitation or rebuilding of such sub-standard and decadent areas for residential, governmental, recreational, business, commercial, industrial or other purposes . . . public uses and benefits for which private property may be acquired by eminent domain or regulated by wholesome and reasonable orders, laws and directions and for which public funds may be expended for the good and welfare of this commonwealth . . ."

The authority established under § 26K, as amended, of the housing authority law for the purpose, among other things, of clearing "sub-standard, decadent, or blighted open areas" has found that the Linwood-Joy area was "sub-standard" and "decadent" within the meaning of § 26J.[1] These

[1] A "Sub-standard area" is defined as "any area wherein dwellings predominate which, by reason of dilapidation, overcrowding, faulty arrangement or design, lack of ventilation, light or sanitation facilities, or any combination of these factors, are detrimental to safety, health or morals" (§ 26J, as appearing in St. 1946, c. 574 § 1). A "Decadent area" is "any area which is detrimental to safety, health, morals, or welfare because of the existence of buildings which are out of

findings, which are not challenged, are supported by elaborate subsidiary findings which show the area to be that of a typical slum. See *Stockus* v. *Boston Housing Authority*, 304 Mass. 507, 509-512. It also appears that the authority has done all things necessary under the provisions of § 26KK, as amended, for the approval of a plan, hereinafter called the redevelopment plan, for the Linwood-Joy area, and that such plan has been approved in accordance with those provisions. Under the plan the authority is to take all land within the area by eminent domain and thereafter it is to be sold to private parties for redevelopment for private industrial uses. An agreement has been entered into between the city and the authority whereby the authority has agreed to undertake the redevelopment plan and the city has agreed to pay not less than one third of the cost thereof. The balance is to be paid for by grants obtained from the United States under Title I of the Federal housing act of 1949, 63 Sts. at Large, 414; U. S. C. (1952 ed.) Title 42, § 1451 et seq.

The plaintiffs properly do not assail the statute

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repair, physically deteriorated, unfit for human habitation, or obsolete, or in need of major maintenance or repair, or because much of the real estate in recent years has been sold or taken for non-payment of taxes or upon foreclosure of mortgages, or because many buildings have been torn down and not replaced and in which under existing conditions it is improbable that the buildings will be replaced, or because of a substantial change in business or economic conditions, or because of inadequate light, air, or open space or excessive land coverage, or by reason of any combination of any of the foregoing conditions" (§ 26J, as amended by St. 1953, c. 647, § 11).

on the ground that slum clearance is not a public purpose. If that were the only question involved the case would be governed by *Allydonn Realty Corp.* v. *Holyoke Housing Authority*, 304 Mass. 288. In that case, which involved other provisions of the housing authority law, it was held, after full discussion, that slum clearance was a public purpose for which public funds could be expended. And it was further held that the building of low rent housing units in conjunction with a slum clearance project was a means for the attainment of the primary objective, slum clearance, and was likewise a public purpose. The vice of the statute under consideration, according to the plaintiffs, is that it authorizes the exercise of the eminent domain power and the expenditure of public funds for the acquisition of land which will be sold to private persons. It is true that the redevelopment plan contemplates that after the area is cleared the land will be sold to private persons, and that this course is sanctioned by the statute. § 26 LL. This is the only material respect in which the statute under consideration differs from that in the *Allydonn* case. It is argued, however, that this difference is sufficient to invalidate the statute because it permits the power of eminent domain to be used for private purposes. We do not agree. Of course, that the power cannot be so used is too well settled to require citation of authority. But the plaintiffs' argument, we think, puts the cart before the horse. The plan here, properly interpreted, does not have for its primary objective the taking of the property of one indi-

vidual and turning it over to another, so that slum clearance can be said to be merely incidental to that objective. On the contrary, we are of opinion that the main purpose of the plan is slum clearance and that the disposition of the land by sale thereafter is incidental to that purpose. Once the public purpose contemplated by the statute has been achieved the authority is not obliged to retain the cleared land as unproductive property. *Dingley* v. *Boston*, 100 Mass. 544. *Moore* v. *Sanford*, 151 Mass. 285. *Wright* v. *Walcott*, 238 Mass. 432, 436-437.

In *Dingley* v. *Boston* it was held that land taken in fee by the city of Boston by eminent domain for the purpose of correcting a defective drainage condition which had become a public nuisance was a public use notwithstanding the fact that on completion of the work the nuisance would be abated and the property might then be occupied by private persons. The case of *Moore* v. *Sanford* involved the constitutionality of a statute which authorized the taking by the Commonwealth of certain lands and flats for the improvement of Boston Harbor, and for furnishing better accommodations for the railroad and commercial interests of the city. The statute contemplated that portions of the land taken, when improved, would be sold to private persons for commercial purposes. It was contended that the statute was unconstitutional because it authorized the taking of property for private purposes. The court held that the property was taken primarily for a public purpose and the fact that after this purpose was accomplished the

Commonwealth expected to sell some of the property to advantage did not invalidate the statute. "If lands are taken for a public use and for the benefit of the community, it is not of importance that individuals, or, as in this case, the Commonwealth, may derive incidental advantage therefrom" (151 Mass. 285, 290). "Stating the proposition broadly, the taking in fee of private lands for a public use, the achievement of the aim contemplated . . . and the subsequent sale of the land so taken for private improvement is a recognized and valid exercise of the power of the General Court." *Wright* v. *Walcott*, 238 Mass. 432, 436-437. The great weight of authority has upheld the constitutionality of slum clearance and redevelopment statutes against attack similar to that made here.[1] Indeed, in only two jurisdictions (Florida and Georgia) has the attack been successful. *Adams* v. *Housing Authority of Daytona Beach*, 60 So.

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[1] *Schneider* v. *District of Columbia*, 117 Fed. Sup. 705, 715-719. *Opinion of the Justices*, 254 Ala. 343. *Rowe* v. *Housing Authority of Little Rock*, 220 Ark. 698. *Redevelopment Agency of the City & County of San Francisco* v. *Hayes*, 122 Cal. App. (2d) 777. *Gohld Realty Co.* v. *Hartford*, 141 Conn. 135. *Chicago Land Clearance Commission* v. *White*, 411 Ill. 310. *Herzinger* v. *Mayor & City Council of Baltimore*, 203 Md. 49. *In re Slum Clearance*, 331 Mich. 714. *Velishka* v. *Nashua*, — N.H. —, (106 Atl. (2d) 571). *State* v. *Rich*, 159 Ohio St. 13. *Foeller* v. *Housing Authority of Portland*, 198 Ore. 205. *Belovsky* v. *Redevelopment Authority of Philadelphia*, 357 Pa. 329. *Ajootian* v. *Providence Redevelopment Agency of Providence*, — R.I. —, (91 Atl. (2d) 21). *Nashville Housing Authority* v. *Nashville*, 192 Tenn. 103. *Hunter* v. *Norfolk Redevelopment & Housing Authority*, 195 Va. 326. *Commett* v. *Portland*, — Maine — (1954).

(2d) 663 (Fla.). *Housing Authority of Atlanta* v. *Johnson*, 209 Ga. 360.

The further contention in the brief of an amicus curiae that the statute violates the Fourteenth Amendment to the Federal Constitution need not detain us long. In essence the argument is that § 26LL of the statute empowers housing authorities to impose restrictions which might preclude residential use of a cleared slum area which is sold or leased for redevelopment.[2] Hence, it is said, this would prevent persons from living where they choose and would abridge their rights and privileges as citizens. We are of opinion that the point is without merit. We are not disposed to interpret the Fourteenth Amendment as forbidding a State from adopting measures in connection with slum clearance legislation which will prevent or render less likely the reemergence of slum conditions in the cleared area. The Legislature might well have concluded that this would best be accomplished if the area when cleared was devoted thereafter to non-residential uses. We cannot say that this is unreasonable.

It is to be noted that the project here involved was found by the authority to be a "decadent" and

[2] Section 26LL of the Massachusetts housing authority law provides that if the authority sells or leases land acquired for slum clearance "the terms of such sales or leases shall obligate the purchasers or lessees . . . to devote the land to the use specified in the redevelopment plan for said land." The power granted under this provision was in fact exercised, for the plan called for restrictions against residential use for a period of thirty years.

"substandard" area as defined by the statute and in upholding the statute we do so only in so far as it applies to a redevelopment of such areas. Whether the statute would be constitutional as applied to the redevelopment of a "blighted open area" is a question not before us and we make no intimation one way or the other.[1] See *Schneider* v. *District of Columbia*, 117 Fed. Sup. 705, 719-725. Compare *Redevelopment Agency of the City & County of San Francisco* v. *Hayes*, 122 Cal. App. (2d) 777, 790-798.

It follows that in the *Papadinis* case a decree is to be entered declaring that the housing authority has a right to take the plaintiff's property by emi-

[1] "Blighted open area" is defined as "any predominantly open area which is detrimental to safety, health, morals or welfare because it is unduly costly to develop it soundly through the ordinary operations of private enterprise and which is to be developed for predominantly residential purposes by reason of the existence of physical conditions including, but not by way of limitation, the presence of ledge or rock, the existence of unsuitable soil conditions, the necessity of unduly expensive excavation, fill or grading or of the construction of unduly expensive retaining walls, or the necessity of undertaking unduly expensive measures for the waterproofing of buildings or for the drainage of the area or for the prevention of the flooding thereof or for making the same appropriate for sound development; or by reason of obsolete, inappropriate or otherwise faulty platting or subdivision, deterioration of site improvements or facilities, diversity of ownership of plots, inadequacy of transportation facilities or other utilities, or by reason of a substantial change in business or economic conditions or practices, or tax and special assessment delinquencies; or by reason of any combination of any of the foregoing conditions, and which substantially impairs the sound growth of the community" (§ 26J, as amended by St. 1953, c. 647, § 12).

nent domain. In the taxpayers' case the interlocutory decree sustaining the demurrer is affirmed.

So ordered.

STATE OF WISCONSIN: IN SUPREME COURT

No. 111

August Term, 1954

DAVID JEFFREY CO., AN ILLINOIS CORPORATION, APPELLANT

v.

CITY OF MILWAUKEE, A MUNICIPAL CORPORATION, ET AL., RESPONDENTS

[Decided October 6, 1954]

APPEAL from an order of the circuit court for Milwaukee county: ELMER W. ROLLER, Circuit Judge. Affirmed.

Action by plaintiff, David Jeffrey Company, an Illinois Corporation, as property owner and taxpayer of the city of Milwaukee on behalf of itself and others, for a declaratory judgment under sec. 269.56, Stats., to determine the validity and constitutionality of sec. 66.43, Stats., entitled "Blighted Area Law." The defendant, City of Milwaukee, is a municipal corporation, and the defendant, Virgil H. Hurless, is the Comptroller of that city. The defendant, Housing Authority of the City of Mil-

waukee, is a public body corporate and politic, created by the Common Council of the city of Milwaukee and organized and existing by virtue of sec. 66.40, Stats.

The plaintiff seeks a declaration that sec. 66.43, Stats., (Blighted Area Law), and the resolutions, ordinances, acts, contracts and proceedings adopted, executed or taken and the further acts to be taken by the city of Milwaukee thereunder, are illegal and void, in that they violate various provisions of the State and Federal Constitutions. Plaintiff also seeks to enjoin the defendants from further action under the statute. The defendants demurred to the complaint and the trial court by order sustained the demurrer. This appeal is taken from such order.

The legislature by its enactment of sec. 66.43, Stats., found the existence of substandard, unsanitary, deteriorated, slum and blighted areas in cities of the State. It declares the need for the elimination of such areas and the impotency of existing means or methods, public or private to deal effectively with such conditions. It empowers cities of the State to eliminate and redevelop areas of that type and to such end, acquire property by purchase, eminent domain or otherwise, and to hold, improve, sell or lease property so acquired, and to use its credit and expend tax funds for the accomplishment of such purpose.

In substance the amended complaint alleges that acting under the provisions of sec. 66.43, Stats., the

defendant, City of Milwaukee, has engaged in effort with regard to slum clearance and redevelopment of seven areas in that city, one of which is Hillside Neighborhood Redevelopment Area, known also as "Hillside Area"; and that unless the relief sought is granted, the city will proceed to demolish and redevelop that area; and that for such purpose the city of Milwaukee has obtained a grant from the United States of America, and will receive further grants, and will borrow money, and expend public funds, in its endeavor to acquire property in the area for demolition and redevelopment purposes. Specifically, the complaint assails the constitutionality of the Blighted Area Law and the individuality of acts thereunder upon the following bases:

"(a) The acquisition by the exercise of the power of eminent domain of all the land and structures comprising the Hillside area and for the purpose of redevelopment thereof by private corporations and individuals for their private use and profit is in violation of Article I, Section 13 of the Constitution of the State of Wisconsin and the Fourteenth Amendment to the Constitution of the United States of America in that such acquisition and use of such property is for a private as distinguished from a public use and purpose; the acquisition by such power of eminent domain, within said Hillside area, of parcels of vacant land, and of structures which are themselves safe, sanitary and sound, further violates the aforesaid provisions of the Constitutions of the State of Wisconsin and the United

States of America as the acquisition thereof serves or promotes no public use or purpose.

"(b) The appropriation of $500,000 of public funds of the City of Milwaukee and the issuance and sale of $750,000 of general obligation bonds of said City to aid in financing such slum clearance and urban redevelopment projects including the Hillside area are in violation of the provisions of Article VIII, Section 3 of the Constitution of the State of Wisconsin in that the use and application of such funds for such purposes are the giving or lending and expenditures of public funds and credit for private purposes in aid of individuals, associations or corporations.

"(c) The designation of the boundaries, and the determination of given areas as blighted areas by the City of Milwaukee, the determination of types of re-use of any such area, the selection of purchasers or lessees of such property, the fixing of sales and lease prices, and the imposition of restrictions on re-use of the land in any such areas, are in violation of Article IV, Section 1 of the Constitution of the State of Wisconsin in that the said 'blighted area law' as amended, authorizing such actions, does not provide with regard thereto adequate standards and criteria."

Amicus Curiae also raised the question:

"Does adoption by the Housing Authority of the City of Milwaukee of Boundaries of a redevelopment project area under the provisions of 66.43

Stats., without giving notice of hearings to property owners within the area and without findings upon which it bases its determination as to the boundaries of the project area of 'Blight' violate the 'Due Process' clause of Section 1, of the 14th Amendment of the United States Constitution."

Attached to the complaint and made a part thereof by reference are reports, surveys, and studies, including findings, made by several departments of the city government as to blight conditions in the "Hillside Area."

The trial court determined that a justiciable controversy exists and that the entry of a declaratory decree will terminate the uncertainty or controversy giving rise to the proceeding.

A somewhat detailed reference to the enactment of the legislature is necessary to an understanding of the issues involved and the contentions made.

Sec. 66.43, Stats., provides:

Par. 1 provides that the act shall be known and may be cited and referred to as the "blighted area law."

Par. 2 sets forth the legislature's findings and declaration of necessity. It reads:

"It is hereby found and declared that there have existed and continue to exist in cities within the state, sub-standard, insanitary, deteriorated, slum and blighted areas which constitute a serious and growing menace, injurious and inimical to the public health, safety, morals and welfare of the resi-

dents of the state; that the existence of such areas contributes substantially and increasingly to the spread of disease and crime (necessitating excessive and disproportionate expenditures of public funds for the preservation of the public health and safety, for crime prevention, correction, prosecution, punishment, and the treatment of juvenile delinquency and for the maintenance of adequate police, fire and accident protection, and other public services and facilities), constitutes an economic and social liability, substantially impairs or arrests the sound growth of cities, and retards the provision of housing accommodations; that this menace is beyond remedy and control solely by regulatory process in the exercise of the police power and cannot be dealt with effectively by the ordinary operations of private enterprise without the aids herein provided; that the acquisition of property for the purpose of eliminating substandard, insanitary, deteriorated, slum or blighted conditions thereon or preventing recurrence of such conditions in the area, the removal of structures and improvement of sites, the disposition of the property for redevelopment incidental to the foregoing, and any assistance which may be given by cities or any other public bodies in connection therewith, are public uses and purposes for which public money may be expended and the power of eminent domain exercised; and that the necessity in the public interest for the provisions herein enacted is hereby declared as a matter of legislative determination. * * *"

Par. (2m) provides that there shall be no discrimination as to race, color, creed, or national origin with regards to rights or privileges under the act.

Par. 3 is a glossary.

Par. 4 pertains to powers of cities under the act and reads in part:

"(a) Every city is hereby granted (in addition to its other powers) all powers necessary or convenient to carry out and effectuate the purposes and provisions of this section, including the following powers in addition to others herein granted:

"1. To prepare or cause to be prepared redevelopment plans and to undertake and carry out redevelopment projects within its corporate limits.

"2. To enter into any contracts determined by the local legislative body to be necessary to effectuate the purposes of this section.

"3. Within its boundaries, to acquire by purchase, eminent domain or otherwise, any real or personal property or any interest therein, together with any improvements thereon, necessary or incidental to a redevelopment project; to hold, improve, clear or prepare for redevelopment any such property; to sell, lease, subdivide, retain for its own use, mortgage, or otherwise incumber or dispose of any such property containing covenants, restrictions, and conditions regarding the use of such property in accordance with a redevelopment plan and such other covenants, restrictions and conditions as it

may deem necessary to prevent a recurrence of blighted areas or to effectuate the purposes of this section; * * *

"4. To borrow money and issue bonds, and to apply for and accept advances, loans, grants, contributions, and any other form of financial assistance from the federal, state or county government, or other public body or from any sources for the purpose of this section; * * *

(b) Condemnation proceedings for the acquisition of real property necessary or incidental to a redevelopment project shall be conducted in accordance with ch. 32 or any other laws applicable to the city.

(c) Notwithstanding any other provision of law, the local legislative body may designate the housing authority of the city, as the agent of the city, to do all acts which would otherwise be performed by the planning commission under this section; and the housing authority is hereby empowered to perform such acts; except, the development of a general plan of the city, which function shall be reserved to the planning commission."

Par. 5 pertains to general and project area redevelopment plans and reads in part:

"(a) The planning commission is hereby directed to make and, from time to time, develop a comprehensive or general plan of the city, including the appropriate maps, charts, tables and descriptive, interpretive and analytical matter, which plan is intended to serve as a general framework or guide

of development within which the various area and redevelopment projects under this section may be more precisely planned and calculated, and which comprehensive or general plan shall include at least a land use plan which designates the proposed general distribution and general locations and extents of the uses of the land for housing, business, industry, recreation, education, public buildings, public reservations and other general categories of public and private uses of the land.

"(b) For the exercise of the powers granted and for the acquisition and disposition of real property for the redevelopment of a project area, the following steps and plans shall be requisite, namely:

"1. Designation by the planning commission of the boundaries of the project area proposed by it for redevelopment, submission of such boundaries to the local legislative body and the adoption of a resolution by said local legislative body declaring such area to be a blighted area in need of redevelopment.

"2. Adoption by the planning commission and approval by the local legislative body of the redevelopment plan of the project area. Such redevelopment plan shall conform to the general plan of the city and shall be sufficiently complete to indicate its relationship to definite local objectives as to appropriate land uses, improved traffic, public transportation, public utilities, recreational and community facilities, and other public improve-

ments in the project area, and shall include, without being limited to, a statement of the boundaries of the project area; a map showing existing uses and conditions of real property therein; a land use plan showing proposed uses of the area; information showing the standards of population density, land coverage, and building intensity in the area after redevelopment; a statement of proposed changes, if any, in zoning ordinances or maps and building codes and ordinances; a statement as to the kind and number of site improvements and additional public utilities which will be required to support the new land uses in the area after redevelopment; and a statement of a feasible method proposed for the relocation of families to be displaced from the project area.

"3. Approval of a redevelopment plan of a project area by the local legislative body may be given only after a public hearing conducted by it, and a finding by it that said plan is feasible and in conformity with the general plan of the city. Notice of such hearing, describing the time, date, place, and purpose of the hearing and generally identifying the project area, shall be given by publication for 2 consecutive weeks in a newspaper having general circulation in the city, the last publication to be at least 10 days prior to the date set for the hearing. All interested parties shall be afforded a reasonable opportunity at the hearing to express their views respecting the proposed plan, but the hearing shall be only for the purpose of assisting

the local legislative body in making its determination.

"(c) * * *

"(d) After a project area redevelopment plan of a project area shall have been adopted by the planning commission and approved by the local legislative body, the planning commission may at any time certify said plan to the local legislative body, whereupon said body shall proceed to exercise the powers granted to it in this section for the acquisition and assembly of the real property of the area. * * *"

Par. 6 pertains to transfer, lease or sale of real property in project areas for public and private uses and reads in part:

"(a) After the real property in the project area shall have been assembled, the city shall have power to lease or sell all or any part of said real property (including streets or parts thereof to be closed or vacated in accordance with the plan) to a redevelopment company or to an individual or a partnership for use in accordance with the redevelopment plan. * * *"

"(b) to (g) * * *

Par. 7 provides for housing for displaced families in connection with the redevelopment of blighted areas.

Par. 8 pertains to use-value appraisals.

Par. 9 pertains to the protection afforded cities under redevelopment plans.

to the character of the use. Lewis, Em. Dom. sec. 158. In the same section it is said: 'All the courts, we believe, concur in holding that whether a particular use is public or not, within the meaning of the constitution, is a question for the judiciary'."

In the case of *In re Southern Wisconsin Power Co.* (1909), 130 Wis. 245, 263, 122 N. W. 801, it was said:

"The right of courts to decide whether the purpose is public for which it is proposed to condemn property is undoubted. Such a rule does not preclude the courts from according proper deference to legislative declarations as to what constitutes a public purpose."

In *State ex rel. McClure* v. *Hagerman*, 155 Ohio St. 320, 98 N. E. (2d) 835, it was said:

"Generally, the 'public purpose' for which a municipal corporation can expend money has for its objective the promotion of the public health, safety, morals, general welfare, security, prosperity, and contentment of all the inhabitants or residents within the municipal corporation, the sovereign powers of which are used to promote such public purpose * * * The determination of what constitutes a 'public purpose' for which a municipality may expend money is primarily a legislative function, subject to review by the courts when abused, and the determination of the legislative body of that matter should not be reversed except in instances where such determination is palpably and manifestly arbitrary and incorrect."

The validity of a statute must be sustained unless it palpably contravenes a provision of the State or Federal Constitutions. This court is bound to give to an act a construction that will avoid constitutional objections to its validity if it will bear such construction. *State* v. *Coub* (1946), 248 Wis. 247, 21 N. W. (2d) 381.

The constitutionality of slum clearance laws has been almost uniformly upheld by courts of last resort in many states. Legislation combining slum clearance and urban redevelopment projects, similar to the blighted area law under consideration, have also been upheld in many jurisdictions. *Foeller* v. *Housing Authority of Portland*, 198 Ore. 205, 256 Pac. (2d) 752; *In Re Opinion of the Justices*, 254 Ala. 343, 48 S. (2d) 757; *Rowe* v. *Housing Authority of City of Little Rock*, 249 S. W. (2d) 551; *People ex rel. Tuohy* v. *City of Chicago*, 399 Ill. 551, 78 N. E. (2d) 285; *Belovsky* v. *Redevelopment Authority of City of Philadelphia*, 357 Pa. 329, 54 A. (2d) 277; *Ajootian* v. *Providence Redevelopment Agency*, 91 A. (2d) 21; *Nashville Housing Authority* v. *City of Nashville*, 192 Tenn. 103, 237 S. W. (2d) 946; *Opinion to the Governor*, 76 R. I. 249, 69 A. (2d) 531; *Herzinger* v. *Mayor & City Council of Baltimore*, 98 A. (2d) 87. Urban redevelopment corporation laws have also been held valid. *Zurn* v. *City of Chicago*, 389 Ill. 114, 59 N. E. (2d) 18; *Redfern* v. *Board of Commissioners of Jersey City*, 137 N. J. 356, 59 A. (2d) 641; *Murray* v. *LaGuardia*, 291 N. Y. 320, 52 N. E. (2d) 884; *David Zisook, et al.* v. *Maryland-Drexel Neighborhood Redevelop-*

ment Corporation, et al., — Ill. —; and *People ex rel. John Gutknecht, State's Attorney of Cook County* v. *City of Chicago*, — Ill. —, decided by the Supreme Court of Illinois on September 23, 1954. True, in these cases there was not uniform construction of the term *public use*. Some of these cases involved consideration of programs of a type especially authorized by state constitution provisions. In others, the term *public use* was construed as being interchangeable with *public benefit*. Some involved the same construction that this court has placed upon the term. *Foeller* v. *Housing Authority of Portland* (1953), 198 Ore. 205, 256 Pac. (2d) 752, involved consideration of the validity of a redevelopment law in a jurisdiction committed to the strict construction of *public use*, as exists in this state. In that case it was said:

"* * * the term 'public use', in our constitution, means a more intimate relationship between the public and an item of property which has been acquired under the power of eminent domain than is denoted by terms such as 'public benefit' and 'public utility'. Public use demands that the public's use and occupation of the property must be direct. If someone other than the public uses the property, the fact that the public will share in the benefits does not suffice. It must be the public which will use and occupy the property upon its acquisition. In the present instance it is clear that if the attacked statute is sustained as valid it will be a public body, the Housing Authority, and not a pri-

vate person which will be authorized to acquire the property in the Vaughn Street area. Likewise, upon its acquisition and before its resale or lease, if either ever occurs, it will be a public body, the Housing Authority, which will use, possess, have an interest in or make a profit out of it."

The first question raised by the appellants upon this appeal is: May the city of Milwaukee under the provisions of section 66.43, Wisconsin Statutes, acquire and assemble areas which are blighted for the purpose of clearing such areas and redeveloping them so as to prevent the spread of recurrence of slum conditions or conditions of blight in such areas and, after such acquisition, contract with respect thereto or sell and lease such areas to private persons or redevelopment corporations?

The appellant contends that the acquisition of land by eminent domain as permitted by the Blighted Area Law for blight clearance and redevelopment of blighted areas is not for such *public use* as is contemplated by Article I, sec. 13 of the State Constitution. It maintains that the clearance of areas as permitted by the act does not entail (other than actual occupation for the short length of time involved in destroying the properties) any *public use* as that term is construed in this state. It argues that the mere fact that the city's agents or servants will raze the buildings does not give such project the character of public use. It contends further that the condemnation of *vacant* land in a designated blighted area will serve no *public use*.

The Legislature's enactment stems from the police power of the state. The use of all property is subject to the police power of the state, to be exercised for the protection of the health, safety and general welfare of the public, either directly or through subordinate agencies to whom the exercise of such prerogative may be entrusted. The Legislature's findings and declarations indicate that the health, safety, morals and general welfare of the people are being seriously threatened by the conditions which are found to exist. The act provides a method for the elimination of the conditions and the prevention of their recurrence. Obviously, the Legislature is of a mind that the police power, unaided by the power of eminent domain, is inadequate to attain the results which it desires to accomplish. The Legislature permits the acquisition of property for the purposes enumerated in the statute, and declares that such acquisition is for a public use. While a Legislature's finding that a taking of property which a measure authorizes will be for the public use is not binding upon the courts, the latter will accord respect to the views of the Legislature. As stated in *Smith* v. *Cameron*, 106 Ore. 1, 210 Pac. 719:

"The courts will always enter upon an inquiry concerning the validity of a statute authorizing the exercise of the power of eminent domain with the presumption that a use is public if the Legislature has declared it to be such."

No act of the Legislature can be held unconstitutional unless it is plainly and unquestionably in violation of the will of the people as declared in the fundamental law. When the public nature of the use for which a taking has been authorized by law is disputed, the question, as it presents itself to the courts, is whether the Legislature might reasonably have considered the use public. The presumption is that such use is public if the Legislature has declared it to be such. The decision of the Legislature must be treated with the consideration due to a coordinate department of the government of the state. 18 Am. Jur., Eminent Domain, p. 675, sec. 46.

The determination of what constitutes a public municipal purpose is primarily a function of the legislative body, subject to a review by the courts, and such determination by the legislative body will not be overruled by the courts except in instances where that determination is manifestly arbitrary or unreasonable. *State ex rel. Gordon* v. *Rhoades*, 156 Ohio St. 81, 100 N. E. (2d) 225.

It was clearly within the province of the Legislature to have made the findings appearing in sec. 66.43, Stats. There is no challenge of those findings in this cause, and their verity must be accepted. That there is public need for the elimination of blighted areas and for the prevention of the recurrence of such conditions in cities of the state, is uncontradicted. It appears plain that the controlling motive for the ridding of blight and the assurance of its non-repetition is the safeguarding of the pub-

Par. 10 provides for modification of development plans.

Par. 11 pertains to limitation upon tax exemption.

Par. 12 pertains to financial assistance.

Par. 13 pertains to co-operation and use of city funds.

Par. 14 pertains to limited obligations.

Par. 15 provides in part:

"This section shall be construed liberally to effectuate the purposes hereof and the enumeration therein of specific powers shall not operate to restrict the meaning of any general grant of power contained in this section or to exclude other powers comprehended in such general grant."

Par. 16 pertains to the validation of contracts, undertakings, etc., of cities entered into before July 10, 1953, pursuant to previously existing statute regarding blight areas.

STEINLE, J. The specific questions presented for determination are:

May the City of Milwaukee under the provisions of section 66.43, Wisconsin Statutes, acquire and assemble areas which are blighted for the purpose of clearing such areas and redeveloping them so as to prevent the spread or recurrence of slum conditions or conditions of blight in such areas and, after such acquisition, contract with respect thereto

or sell and lease such areas to private persons or redevelopment corporations?

May the City of Milwaukee use its credit or expend tax funds in acquiring blighted areas or portions thereof incidental to the proper clearance and redevelopment of areas where such blight exists?

May the legislature properly delegate to the Common Council of the City of Milwaukee the authority to determine proposed boundaries of a project area proposed for redevelopment, the redevelopment plan of the project area, and the finding by the Common Council after public hearing that such redevelopment plan of a project area is feasible and in conformity with the general plan of the city?

Does adoption by the Housing Authority of the City of Milwaukee of Boundaries of a redevelopment project area under the provisions of 66.43 Stats., without giving notice of hearings to property owners within the area and without findings upon which it bases its determination as to the boundaries of the project area of "Blight" violate the "Due Process" clause of Section 1, of the 14th Amendment of the United States Constitution?

The principal controversy in the case arises out of the provisions of the Blight Area Law granting to cities the power of eminent domain. Both parties agree that the right of eminent domain can be exercised for the taking of private property only

for public use. The underlying consideration in this cause is the character of the use to be made of the property which sec. 66.43, Stats., permits cities to acquire by eminent domain.

Appellants contend that notwithstanding the fact that the public may derive incidental benefits from the application of these statutory provisions, the term *public benefit* is not synonymous with that of *public use*, and that the program authorized by the statute is not for a *public use* as that term has been defined in this state.

The courts are not in agreement as to the tests to be applied in determining whether a use is public. Some courts have gone so far in the direction of a liberal construction as to hold that "*public use*" is synonymous with "*public benefit*", "*public advantage*", "*public interest*", or '*public welfare.*" Other courts have adopted a strict construction holding in effect that "*public use*" means the right of the public to a definite and fixed use of the property appropriated.

Sec. 13, article I of the Wisconsin Constitution, declares: "The property of no person shall be taken for public use without just compensation therefor."

In *Whiting* v. *The Sheboygan & Fona du Lac Railroad Company and others* (1870), 25 Wis. 167, it was held that the "*public use*" which authorizes the exercise of the power of eminent domain implies a possession, occupation and enjoyment of the

land by the public, or public agencies. In declaring such principle, this court there, at pages 194 to 196, said:

"The incidental public benefits or advantages, though in a general sense to be considered, do not, therefore, constitute in the sense of the law a public use, which will justify the interference of the government; and the question is, in what does such use consist in the case of these railroads owned and operated by private corporations? We have seen that certain uses are *per se* public, and that others have been pronounced so by the courts, and, among the latter, railroads. Eminent domain is the right of the government to seize private property for public use, upon payment of just compensation to the owner. It is a power which must be exercised by the government or sovereign, and for the public use only. * * * The '*public use*,' says Judge Cooley, in his excellent treatise on Constitutional Limitations, 531, 'implies a possession, occupation and enjoyment of the land by the public, or public agencies'. * * * It appears, then, that the *public use* consists in the *possession, occupation and enjoyment of the land itself by the public, or public agencies*, and not in any incidental benefits or advantages which may accrue to the public from enterprises of this nature. But the question before us calls for a more precise definition as to how it is that the public may be said to possess, occupy and enjoy the land condemned for

the use of these railroad companies. * * * The public use, therefore, which has been held to justify the application of the doctrine of eminent domain in the case of these railroads owned and operated by private individuals, consists in the fact that the owners cannot, without reasonable excuse, refuse to receive and transport passengers and freight when offered at usual rates, and in the fact that *the state retains the power to regulate and control the franchise, and limit the amount of tolls which it shall be lawful for the owners to charge.* The use consists in these facts, and these alone. And as a man may be said to possess and enjoy the estate of another, the use of which by that other he may regulate and control, so that it shall not be turned to his detriment or disadvantage, so the public, through this reserved power of the state, may be said to possess and enjoy the land condemned for use by these railroad companies. And this is the public use which has been held to justify the exercise of the power of eminent domain in behalf of such corporations, a power which, by the barrier erected by the constitution, requiring payment of full compensation to the owner, is far less susceptible of legislative abuse, and far less dangerous to private right, than the power of taxation."

This court has not departed from its construction of the term "*public use*" announced in *Whiting* v. *The Sheboygan & Fond du Lac Railroad Company and others, supra.*

In Oregon, where the term "*public use*" has been construed as by this court, it was said:

"'The Courts, including this court, which take the opposing view, assert that there is a distinction between a public use and a benefit to the public, and that private enterprises that give employment to many people and produce large quantities of commodities of various kinds are not necessarily public uses and that the term "public use" as used in the constitutions is not synonymous with the term "public benefit" * * *. The idea emphasized by this main line of decisions is expressed by Judge Cooley, thus:

"'The public use implies a possession, occupation, and enjoyment of the land' by the public or public agencies, and it is not enough 'that the public would receive incidental benefits, such as usually spring from the improvement of lands or the establishment of prosperous private enterprises.' *Cooley's Constitutional Limitations.* (7th Ed.) 766". *Smith* v. *Cameron*, 106 Ore. 1, 210 P. 716, 27 A.L.R. 510.

And the court in said case quoted with approval *Lewis on Eminent Domain*, 2nd Ed. sec. 165.

"'The use of a thing is strictly and properly the employment or application of the thing in some manner. The public use of anything is the employment or application of the thing by the public. Public use means the same as use by the public and this it seems to us is the construction the words

should receive in the constitutional provision in question. The reasons which incline us to this view are: First, that it accords with the primary and more commonly understood meaning of the words; second, it accords with the more general practice in regard to taking private property for public use in vogue when the phrase was first brought into use in the earlier Constitutions; third, it is the only view which gives the words any force as a limitation or renders them capable of any definite and practical application.

" 'If the Constitution means that private property can be taken only for use by the public, it affords a definite guide to both the Legislature and the courts. Though the property is vested in private individuals or corporations, the public retain certain definite rights to its use or enjoyment, and to that extent it remains under the control of the Legislature. If no such rights are secured to the public, then the property is not taken for public use and the act of appropriation is void. * * *' "

The Legislature under sec. 66.43, Stats., has made an express finding of the existence of slum and blighted areas in cities of the State. It designates such condition as a serious and growing menace contributing substantially and increasingly to the spread of disease and crime, and requiring maintenance of adequate police, fire and accident protection and other public services. It declares that such existence impairs or arrests the sound growth of cities and retards the provisions of housing ac-

commodations. It finds that the menace of slum clearance is beyond remedy and control solely by the regulatory processes in the exercise of police power and cannot be dealt with by ordinary operations of private enterprises without the aids provided for its enactment. Specifically, by terms of the statute itself, the Legislature has found and declared that the acquisition of property in such areas by eminent domain for the purposes of eliminating the condition and to prevent recurrence, and the removal of structures and improvement of sites therein and the redevelopment thereof according to plan, and assistance given in connection therewith, are *public uses* and *purposes* for which property may be acquired in such manner.

It is within the province of the legislature to declare public use or purpose. In *Schumm* v. *Milwaukee County* (1951), 258 Wis. 256, 265, 45 N. W. (2d) 673, we said, "Primarily, the right to declare what is a public use, is vested in the legislature. 18 Am. Jur. Eminent Domain, p. 675, sec. 46."

It is the function of the court to decide whether the particular use for which the property is sought to be condemned, is public or private. In *The Wisconsin Water Co.* v. *Winans and others* (1893), 85 Wis. 26, 40, 54 N. W. 1003, it was said:

"Of course, the legislature or its agency must, in the first instance, determine whether the use for which it is proposed to make the condemnation is a public use, but such determination is not final as

redevelopment corporation in manner as provided by the statute.

We see no need for comment upon the other point raised by appellant in its challenge under the first question presented for our determination.

The second question raised by appellant is: May the city of Milwaukee use its credit or expend tax funds in acquiring blighted areas or portions thereof incidental to the proper clearance and redevelopment of areas where such blight exists?

Article VIII, sec. 3 reads: "The credit of the state shall never be given, or loaned in aid of any individual, association or corporation."

Appellant again maintains that the redevelopment of a blighted area after its demolition as permitted by the blighted area law, is not for a public use. We have already herein determined that it is clearly for a public use. It is recognized that the powers of eminent domain and taxation are not identical. As was said in *Whiting* v. *The Sheboygan & Fond du Lac Railroad Company and others, supra*, "These powers (eminent domain and taxation) are not identical, though both must be exercised for a public purpose or not at all."

The objects for which money is raised by taxation must be public. In *Brodhead and others* v. *The City of Milwaukee and others*, 19 Wis. 658, this court held:

"The objects for which money is raised by taxation must be public, and such as subserve the common interest and well-being of the community re-

quired to contribute. To justify the court in arresting the proceedings and declaring the tax void, the absence of all possible public interest in the purposes for which the funds are raised must be clear and palpable—so clear and palpable as to be perceptible by every mind at the first blush."

Public funds may be expended by the city for a public purpose. However, expenditure of such funds by the city for a private purpose is unconstitutional. *State ex rel. Larson* v. *Giessel* (1954), 266 Wis. 547, — N. W. (2d) — citing *State ex rel. Thomson* v. *Giessel* (1953), 265 Wis. 207, 60 N. W. (2d) 763; *Heimerl* v. *Ozaukee County* (1949), 256 Wis. 151, 40 N. W. (2d) 546.

By means of the redevelopment plan the city primarily protects itself against the recurrence of blight in affected areas. In other words, it prevents a repetition of hazard to public health, safety, morals and general welfare. The Legislature may unquestionably grant power to the city, and the city may use its power to develop and maintain a program for the accomplishment of such public purpose and for the expenditure of public money in connection therewith.

The city of Milwaukee may lend its credit for the purposes and uses authorized and specified in sec. 66.43, Stats., it being clear that such purposes and uses are public.

Article XI, sec. 3, of the Constitution of Wisconsin expressly recognizes the power of municipal corporations to loan their credit and requires the

lic's health, the public's safety and the public's welfare. When property is acquired for the purposes of eliminating and preventing blighted conditions as provided for by the statute,—that the public will possess, occupy and enjoy the same, is clear. We have no difficulty in concluding that the condemnation of property for the elimination of blight areas and the prevention of the recurrence of blight in such places is for public purpose and public use. We concur with the views expressed in *State ex rel. Bruestle* v. *Rich*, 159 Ohio St. 13, 110 N. E. (2d) 778 that:

"We do not believe that anyone will seriously contend that the elimination of slum and other conditions of blight and provisions against their recurrence would not be conducive to the public welfare and a public purpose."

As hereinbefore indicated, there are many courts of last resort which have reached the same conclusion when determining blight and slum clearance laws.

The act is directed against areas, and not individual structures. The public, through the municipality, acquires the land in the area and uses it for its own protection against the menace which threatens. It also, by plan, provides for the redevelopment of the area to assure against repetition of blight. It is as much a public purpose to prevent recurrence of blight as to eliminate it. As stated by

the learned trial court in its opinion of record herein:

"A careful study of the blighted area law plainly indicates that it has as its purpose the elimination of blight conditions and the prevention of the recurrence thereof by the *acquisition* of blighted areas, the *clearance* of such areas by demolition or removal of structures thereon and the administration of such areas in accordance with a redevelopment plan.

"The municipality will acquire the land by purchase or condemnation, and, however acquired, it is the municipality in fact which will own the land in fee simple. Having acquired the land, it is the municipality, the public, which will use the same in the demolition and removal of structures (either directly or through lessees or purchasers), streets, utilities and other improvements thereon. Having acquired the lands, it is the municipality, the public, which will use the lands in the construction of streets, the installation of utilities and other site improvements, all in accordance with an approved redevelopment plan. It is clearly evident that these redevelopment plans in project areas are intended to fit in and conform to the general plan of the city, with particular reference to land uses, improved traffic plans, transportation facilities, parks and other public uses, which characterize its public purpose."

Clearly, such a program is for a public use, not only with respect to the elimination of the blighted condition, but also with respect to effort in preventing recurrence.

Counsel for appellant contends that since the city may only occupy the land for a short duration of time after acquiring it, a taking by condemnation cannot be deemed as for public use. That the property may be in public use or ownership for a short duration of time is not consequential. It is the character of the use and not its extent which determines the question of public use. In *Chicago Land Clearance Commission* v. *White*, 411 Ill. 311, 104 N. E. (2d) 236, it was said:

"Accordingly, the fact that the property may not long remain in the ownership of the Housing Authority does not itself indicate that the use will not be public and that the agency may not be invested with the power of eminent domain. It is the use at which the agency will put the property rather than the length of time for which its ownership will be continued."

The fact that the property may not long remain in the ownership of the city does not in itself indicate that the use will not be a public use and that the city may not be invested with the power of eminent domain in acquiring it. In *Zurn* v. *City of Chicago*, 389 Ill. 114, 59 N. E. (2d) 18, the court said:

"The fact that the continued use of the property for public purposes, after the elimination of slum

and blight areas and the redevelopment of such areas has been achieved, is only partially assured and safe-guarded by the act, is wholly immaterial. When such areas have been reclaimed and the redevelopment achieved, the public purpose has been fully accomplished. The fact that the act does not thereafter vouchsafe the continued use of the property acquired for public purposes, does not in any way affect the purposes of the act so as to render the taking of the property a taking for a use or purpose which is not public. The achievement of the redevelopment of slum and blight areas, as defined in the act, in our opinion, constitutes a public use and a public purpose, regardless of the use which may be made of the property after the redevelopment has been achieved."

It is not the object of the statute to merely permit the transfer of property from one individual to another. The sale and leasing of the land to private interests is incidental to the accomplishment of the primary purpose. As was said in *Foeller* v. *Housing Authority of Portland, supra:*

"A resale of property in a redevelopment area may lawfully occur only after the housing authority has no more need for the property. A sale at that time is proper for normally property should not be kept in public ownership but should be restored to the tax rolls when the public has no further need for it. A sale of the property is the final act that takes place concerning the project if the plan actually calls for a sale and is in the nature of a

winding up of the project. Its purpose is to enable the public treasury to recoup its money. Resales cannot offer private persons opportunities for enrichment or exploitation, for the act declares that the property must be sold 'at its fair re-use value' and that 'an authority, upon the sale or lease of such land, shall obligate purchasers to lessees: (1) To use the land for the purpose designated in the development plan; (2) To begin the building of their improvements within a period of time which the authority fixes as reasonable.' The sale is not the primary purpose of the project but is only incidental or ancillary to it."

The statute provides that when the objective of blight elimination and subsequent prevention has been accomplished, to-wit, the area has been demolished and the plan for redevelopment with assurance of no recurrence exists, the city may effectively transfer such of the land that it does not use. As was said in *Belovsky* v. *Redevelopment Authority of City of Philadelphia*, 54 Atl. (2d) 277:

"* * * When, therefore, the need for public ownership has terminated, it is proper that the lands be retransferred to private ownership, subject only to such restrictions and controls as are necessary to effectuate the purposes of the act. It is not the object of the statute to transfer property from one individual to another; such transfers * * * are purely incidental to the accomplishment of the real or fundamental purpose."

In *State ex rel. Thomson* v. *Giessel* (1953), 265 Wis. 185, 60 N. W. (2d) 873, this court said:

"The power to sell lands taken when it is determined that they are no longer needed for public use is latent in every taking, and is very different from a taking of land with a contemporaneous knowledge and purpose that a definite and separable part is not necessary for the public use. * * *"

The fact that incidental private advantages to certain lands are expected to accrue from the construction of the improvement does not derogate from the public nature of the use, if it is constructed for the benefit of the public. Nor does the fact that a by-product of the taking is sold for private use derogate from the public nature of the use. 18 Am. Jur., Eminent Domain, p. 670, sec. 41.

In *Wisconsin River Improvement Company* v. *Pier* (1908), 137 Wis. 325, 118 N. W. 857, this court held that where the public use justified the erection of a dam, and the dam, in addition to serving its public purposes, incidentally caused a surplus of water available for power and for private use, the public use was not thereby impaired or destroyed.

Counsel for the respondents here maintain that:

"The transfer by sale or lease, as we have stated before, does not constitute a private use which can defeat the valid operation of the Blighted Area Law. Such sale or transfer, if made to an individual or public entity, is incidental to the primary purpose of the law, namely, the elimination of slums. However, there may be a transfer to a

'redevelopment company' under Section 66.43 (6), Wis. Stats. A redevelopment company may mean a 'public corporation or body corporate, including a public housing authority', under Section 66.43 (3) (k), Wis. Stats. No matter what transfer is made, whether to a private entity or a public corporation, the use of the land must be 'in accordance with the redevelopment plan' (Section 66.43 (6), Wis. Stats.). It is apparent that the use of the property after the slums have been eliminated is restricted in accordance with the redevelopment plan by the applicable statutes, and this manifestly extends the public use of the lands acquired no matter who may be the ultimate owner or lessee of such lands."

We find ourselves in accord with such expressed view.

After the city has assembled the property it is given power to sell or lease. The statute obliges that the sale or lease be effectuated upon the bases of restrictions assuring against recurrence of blight in the area. The fact that in the redevelopment plan the city may provide that the property should be sold to persons eligible to buy under the act does not in itself demand a holding that the power of eminent domain may not be employed for the acquisition of property. In *Churchill* v. *Grants Pass*, 70 Ore. 283, 141 Pac. 164, the right to employ the power of eminent domain was sustained notwithstanding the following circumstances:

"* * * the proposition is to build and own a road for the benefit of its citizens, that it may when built lease or sell it does not alter the fact that primarily it is a public improvement for public purpose."

The appellant also contends that the condemnation of *vacant* land as proposed by the city of Milwaukee will serve no useful purpose.

As to this attack upon the act, we concur with the view expressed by the trial court in its opinion, that:

"Section 66.43 (4) (a) 3, Stats., grants to every city the power to acquire, by eminent domain, any real property necessary or incidental to a redevelopment project.

"Section 66.43 (3) (i) defines real property to include land.

"Section 66.43 (3) (d) Stats., defines land to include 'bare or vacant land'.

"Here again it is to be noted that the law is directed against slum and blighted *areas*, not individual structures. It must be presumed that the legislature believed that the evils resulting from blight are inherent not in the particular structures but in the entire blighted area as a whole. Consider also that the acts of acquisition and clearance are two purposes in the elimination of the blight problem; there remains a third and important purpose —redevelopment of the area, so vitally essential to its return to the community duly safeguarded from

the danger of blight recurrence. Redevelopment will involve the vacation of streets and alleys, the relocation of streets, the construction of new streets, probably the construction of recreational facilities, more than likely the enlargement of sites for dwelling houses, replatting, restrictions as to future uses of the lands in the area as well as many other changes. The necessity for acquiring vacant parcels and unoffending buildings within a blighted area to effectuate a sound workable plan of redevelopment is obvious.

"Conceivably a large amount of vacant land and a large number of unoffending buildings could be included in a blighted area as that term is defined by the act. (Sec. 66.43 (3) (j) 1, Stats.) It must be presumed that the legislature by necessity and duty acted with full knowledge of the problem in defining the requirements of a blighted area. Its findings are entitled to deference and respect. It is not difficult to perceive that the framers of this law recognized the fact that vacant lands and unoffending structures are commingled with the offending properties. The act of condemnation is frequently harsh; to condemn unoffending property and later lease or sell it for private use is repugnant to the concept of the fundamental right of private property. It is apparent, however, that to single out and except from the provisions of the law vacant land and unoffending structures would render the whole program of blighted area redevelopment futile and ineffective. The problem requires more than a half way measure. Neither is

it to be presumed that those charged with the administration of the law will act unreasonably or arbitrarily."

In *Oliver and Recht* v. *The City of Clairton*, 98 Atl. (2d) 47, wherein the court sustained the constitutionality of the Pennsylvania Urban Redevelopment Law, the court said:

"Redevelopment authorities have the power, therefore, where the conditions prescribed in the act are found to exist, to exercise the right of eminent domain pursuant to a redevelopment proposal even though the redevelopment area may be predominantly open, vacant or unimproved."

We consider that the acquisition of property pursuant to provisions of sec. 66.43, Stats., for the purpose of eliminating blighted areas and preventing the spread and recurrence of blight conditions in such areas, the removal of structures and improvement of sites, the sale or leasing of property for redevelopment incidental thereto and with restrictions to prevent recurrence of blight, are for public uses and purposes for which the power of eminent domain may properly be exercised. We find that the statute, sec. 66.43, in these regards does not contravene the constitutional provisions suggested on this appeal. The city of Milwaukee may acquire and assemble areas to carry out the purposes of the statute, and may contract with respect to property acquired under authority of it, and lease or sell such property to private persons or

Legislature to restrict it. *Clark and Others* v. *The City of Janesville* (1859), 10 Wis. 119.

In Sec. 66.43, Stats., there is no restriction,—in fact there are positive declarations by the Legislature permitting a municipality to appropriate money and to issue bonds in order to carry out the program authorized by the act.

Appellant's counsel argue that the taking of property in a rehabilitated area may include the furnishing of financial assistance. It is not improper for a city to lease or contract for the sale of property, the use of which it does not require for public purposes. The statute contemplates that under the redevelopment plan, contract,—lease or sale,—will include restriction to prevent recurrence of blight in the area.

Counsel for appellant contend that since in the glossary, sec. 66.43 (3) (m), Stats., the state is included as a "public body", and that since sec. 66.43 (13) (a), Stats., authorizes any public body to lend or contribute funds to assist any redevelopment project, the state impliedly is authorized to lend its credit in violation of Article VIII, sec. 3, Wisconsin Constitution. Sec. 66.43 (13) (a) provides:

"To assist any redevelopment project located in the area in which it is authorized to act, any public body may, upon such terms as it may determine: Furnish services or facilities, provide property, lend or contribute funds, and perform any other

action of a character which it is authorized to perform for other purposes."

It is to be noted that appellant does not challenge the provision in sec. 66.43 (12) wherein cities may accept grants or other financial assistance from the federal, *state* and county governments, etc., to carry out the purposes of the law. It seems reasonable that if the state can properly make a grant to the city it may with propriety loan money to the city for the express purposes stated. However, in the event that the state could not properly loan money to the city then under the very provisions of 66.43 (13) (a), it is limited in the assistance that it may extend, to the authority which it possesses under the law. However, it appears that since a public use exists, the loaning of credit by any body eligible to lend aid, would not be for the assistance of any private person or group.

The defendant, city of Milwaukee, may validly lend its credit and expend tax funds for the purposes and uses authorized and specified in sec. 66.43, Stats.

The appellant by its third question presented on this appeal, challenges the validity of the Blighted Area Law on the ground that it is an unconstitutional delegation of legislative power, in that it contravenes provisions of Article VI, sec. 1, which provides: "The legislative power shall be vested in a senate and assembly."

It is axiomatic that the Legislature cannot dele-

gate the power to make laws, to any other authority or body. However, the Legislature may delegate to an administrative agency the authority to exercise such legislative power as is necessary to carry into effect the general legislative purpose of a law which the Legislature has enacted. The power of the Legislature to delegate authority to administrative agencies is comprehensively treated in *State ex rel. Wis. Inspection Bureau* v. *Whitman* (1928), 196 Wis. 472, 220 N. W. 929, where Mr. Justice Rosenberry, speaking for the court said:

"The power to declare whether or not there shall be a law; to determine the general purpose or policy to be achieved by the law; to fix the limits within which the law shall operate,—is a power which is vested by our constitutions in the legislature and may not be delegated. When, however, the legislature has laid down these fundamentals of a law, it may delegate to administrative agencies the authority to exercise such legislative power as is necessary to carry into effect the general legislative purpose, in the language of Chief Justice Marshall 'to fill up the details', in the language of Chief Justice Taft 'to make public regulations interpreting the statute and directing the details of its execution.' "

Here, by its enactment, the Legislature has declared the policy and fixed the standards for the administration of the law. It has made a finding of necessity. It defines blighted area. It gives to

cities the responsibility of determining the size of an area to be redeveloped; the costs involved and the details of the redevelopment plan, the method and mechanics of clearance, and the determination of future uses. Obviously, the Legislature could not make specific provisions for all of these items, for the very reason that the size, extent and character of the blighted areas, and the plans for redevelopment, differ in each city where the slum and blight condition exists. The Legislature has prescribed general rules and definite standards, but leaves to the city the administration of them. In parallel situation in Oregon, the court, when sustaining the validity of a blight area redevelopment plan in *Foeller* v. *Housing Authority of Portland, Supra*, cited with approval *In Re Opinion of the Governor* (1949), 76 R. I. 249, 69 Atl. (2d) 531, wherein it was said:

" 'We further believe that the act is not objectionable on the ground of improper delegation of legislative power. What shall constitute a blighted area within the meaning of the act is therein described in unmistakable language. The nature and extent of a blighted area must necessarily vary not only in the different cities and towns but also within the same community. All that the legislature can reasonably do in the circumstances is to prescribe a fixed standard and rules of general application adapted to accomplish the purpose of the act, leaving to the respective local authorities the responsibility of ascertaining as a matter of

fact whether there exists in the community a blighted area within the meaning of the act as herein construed that requires redevelopment in the public interests. The determination of that factual question by the municipality is an administrative act and not the exercise of legislative power.'"

Similar comment is found in *Belovsky* v. *Redevelopment Authority of the City of Philadelphia* (1947), 357 Pa. 329, 54 Atl. (2d) 277, 172 A.L.R. 953.

By provisions of sec. 66.43, Stats., the Legislature fixes with precision the type of tract within the boundaries of a city that may be processed under this law. Clearly, it is to be implied from the act itself, that it is not the intention of the Legislature that an area which does not possess the described characteristics shall be dealt with in manner as provided. In its findings the Legislature defines with particularity the distinguishing marks or features peculiar to the area that is denominated as blighted. It describes with certainty the type of structures that must exist in an area for the effective application of the law. It defines blighted area as one in which a majority of the existing structures are residential or in which there is a predominance of buildings or improvements, whether residential or non-residential. It appears to us that the conditions and standards which the Legislature has fixed are definite, adequate and

reasonable. A city's redevelopment plan based upon such considerations is valid.

We are obliged to hold that the power conferred upon cities by sec. 66.43, Stats., is not an unconstitutional delegation of power by the Legislature.

Counsel appearing amicus curiae also has presented a question for our determination herein. It is stated as follows: Does adoption by the Housing Authority of the city of Milwaukee of boundaries of a redevelopment project area under the provisions of 66.43, Stats., without giving notice of hearings to property owners within the area and without findings upon which it bases its determination as to the boundaries of the project area of "Blight" violate the "Due Process" clause of Section 1, of the 14th Amendment of the United States Constitution?

It is contended by counsel that property owners of the particular area project referred to in the complaint were not served with notice of hearing of proceedings before the Housing Authority of the City of Milwaukee in advance of that agency's designation of the boundaries of the project area proposed by it for redevelopment; and that they were afforded no opportunity to be heard with respect to their interests. It is further contended that, to their damage, the property of such owners was designated by the Housing Authority as being blighted, without findings from which appeal can be had.

Counsel challenge the constitutionality of the

blight area law on ground that it denies due process of law by not requiring that the Housing Authority serve notice of hearing upon property owners of an affected area, afford opportunity of hearing and make findings that can be appealed.

It is to be noted that in the procedural steps provided by the Blight Area Law there is no provision for notice of hearing before the Housing Authority. Nor is record of the Housing Authority's deliberations or action from which appeal can be taken, required. However, approval of a redevelopment plan by the Common Council may only be given after public hearing of which notice has been published.

The actions and determinations of the Housing Authority and the Common Council do not, however, constitute an appropriation of the property of owners in an area designated as blighted, so as to offend against the constitutional provisions that "a state may not deprive a person of property without due process of law."

The city authorities merely determine the utility and feasibility of acquisition of property for the public's use as permitted by the statute. The Legislature has unlimited power to take private property for public use, or to authorize it to be taken by the city, upon making compensation, reserving to the property owner the right to contest the question whether the proposed use is a public or private one, and whether the power is to be exercised for the purpose for which it was conferred.

Sec. 66.43, Stats., nowise withholds from property owners of an area designated as blighted, the

protections granted to them by ch. 32, Stats., (Eminent Domain). Ch. 32, Stats., requires a jury's determination of the necessity for the taking of property.

In ruling upon a contention such as presented here, the court in *Zurn* v. *City of Chicago, supra*, said:

"* * * No such notice to the property owners is necessary to comply with the requirements of due process of law. No property is taken in this proceeding under section 42. The property rights of the landowners are in nowise affected. This is merely another of the steps required by the statute authorizing a redevelopment corporation to exercise the power of eminent domain. After such certificate is issued and suit is filed for the taking of property by the exercise of the power of eminent domain, the court, in such suit, will determine for itself whether or not the steps have been taken and the precedent conditions met by the redevelopment corporation authorizing it to exercise such power.

"The court, in any condemnation suit instituted by a redevelopment corporation, will determine whether these conditions precedent to the exercise of the right have been complied with. The hearing, therefore, in the suit in which it is sought to acquire property by eminent domain, gives to the property owner the right and the opportunity to be heard upon all questions on which he is entitled to a hearing and fulfills all the requirements of due process of law."

When, for instance a city considers and determines the development of a public building, or park, it is not obliged to give notice of its deliberations regarding such undertaking, to property owners within the area of the contemplated site. However, when it attempts to acquire such property for such use by eminent domain, the owners of the property are entitled to challenge the necessity of the taking as provided in ch. 32, Stats. The steps required to be taken precedent to the right of the exercise of the power are legislative questions. The question as to whether such steps have been taken is judicial.

The failure of the Blighted Area Law to provide notice of hearing or opportunity to appeal from the determinations of the Housing Authority does not constitute a denial of due process of law.

By the Court.—Order affirmed.

THE PEOPLE EX REL., JOHN GUTKNECHT, STATE'S ATTORNEY

v.

THE CITY OF CHICAGO, ET AL.

(Docket No. 33236.—Agenda 45—May, 1954)

Supreme Court of Illinois

Opinion Decided September 23, 1954

Mr. JUSTICE SCHAEFER delivered the opinion of the court:

This case presents constitutional issues arising out of the most recent effort of the State to deal

with the problem of urban slums and blighted areas. The Urban Community Conservation Act was adopted by the General Assembly in 1953. It aims at the prevention of slums by the creation of Municipal Community Conservation Boards which are authorized to take steps designed to prevent the spread of slum and blight to new areas. Such a board was appointed for the city of Chicago, and the city council appropriated funds for its use. The validity of the act was challenged upon numerous constitutional grounds in this quo warranto action instituted by the People on the relation of the State's Attorney of Cook County. The defendants, the city of Chicago, its mayor, and the members of the Conservation Board of the city of Chicago, filed a motion to dismiss the complaint which was sustained by the circuit court of Cook County. This direct appeal followed.

The act (Ill. Rev. Stat. 1953, chap. 67½, pars. 91.8-91.16) is concerned with deteriorating urban areas, called conservation areas, which are likely to become slum and blighted areas if their deterioration is not arrested. It describes such areas, provides for the appointment of municipal community conservation boards, and authorizes the boards to designate particular localities as conservation areas. Following the designation of a conservation area the board is authorized, after investigation and hearings, to adopt a conservation plan for the area embodying the steps required to prevent its transition into a slum. The board is authorized to nominate, for appointment by the

presiding officer of the municipality, the members of a conservation community council, composed of residents of the area for each conservation area, whose duty it is to assist in the formulation of the area's conservation plan.

An area conservation plan may include, but is not limited to the following matters: (1) land uses, residential and nonresidential; (2) improvement, alteration, or vacation of major and minor streets and alleys, provision for restricted service access, and off-street parking; (3) locations and easements for public utilities; (4) community facilities; (5) landscaping and site engineering; (6) building restrictions; (7) recommended construction including new buildings, rehabilitation and conversions, demolition of designated structures, and elimination of nonconforming uses; (8) population density, ground coverage, and number of dwelling units recommended; (9) recommended standards of maintenance, and requirements of applicable health and safety ordinances; (10) zoning and/or rezoning required; (11) costs and financing arrangements of public portions of the plan. The plan is required to conform to the comprehensive plan, if any, of the municipality. Ill. Rev. Stat. 1953, chap. 67½, par. 91.12.

After the conservation plan for an area has been approved by the board and by a majority vote of the community council concerned, it is to be submitted to the governing body of the municipality for adoption or rejection. If the plan is adopted, the board is authorized to acquire by purchase,

condemnation or otherwise, any property the acquisition of which is necessary or appropriate for the implementation of the plan, to demolish or remove buildings from the property so acquired and to sell, lease or exchange such property. Ill. Rev. Stat. 1953, chap. 67½, par. 91.13.

Section 7 of the act provides that if, after notice to parties in interest and an opportunity to be heard, an owner of property within the area fails to make such property comply with the minimum standards of applicable municipal ordinances, the board is authorized to apply to the circuit court for an order permitting the corporate authorities to make the necessary repairs, and to collect from the owners the cost of eliminating violations of the ordinances. The cost is made a lien upon the property, subordinate to prior liens, and enforceable by foreclosure as in the case of mortgages or mechanics' liens. Ill. Rev. Stat. 1953, chap. 67½, par. 91.14.

The act is first attacked upon the ground that it authorizes the taking of private property for a private use in violation of section 13 of article II of our constitution. On this point, the act contains an explicit finding and declaration of public policy by the General Assembly that there exist in many urban communities, areas which are "rapidly deteriorating and declining in desirability as residential communities and may soon become slum and blighted areas if their decline is not checked." It is further found and declared that the existence of these areas is detrimental to the

health, safety, morals and welfare of the public, and that the prevention of slums is a public use essential to the public interest. (Ill. Rev. Stat. 1953, chap. 67½, par. 91.9). The weight to be accorded such a legislative declaration has frequently been pointed out. *Cremer* v. *Peoria Housing Authority*, 399 Ill. 579, 588; *People* v. *Chicago Transit Authority*, 392 Ill. 77, 86; *People ex rel. Greening* v. *Bartholf*, 388 Ill. 445, 451; *Hagler* v. *Small*, 307 Ill. 460, 474.

The legislative declaration is buttressed by the Economic Report of the President of the United States, submitted to the Congress on January 28, 1954, which stated: "A successful fight against blight can be waged in these cities only if it is planned and carried forward on a basis sufficiently broad to improve the character of a whole neighborhood. * * * In some cases, urban blight can be corrected only by the total clearance of an area and its subsequent redevelopment; more frequently, however, the need is for selective demolition and rehabilitation, thus conserving and renewing what is still useful in older neighborhoods." Title IV of the recently enacted Federal Housing Act of 1954 makes available grants in aid from the United States to cities not only to eliminate existing slums and blighted areas but also to prevent new slums and blighted areas. Public Law 560, 42 U. S. C. A. 1401 et seq.

Plaintiff does not undertake to dispute the existence of the factual relationship between the prevention of slums and the public welfare upon the

basis of which the General Assembly and the Congress have acted. Rather the argument is that because the act contemplates that properties acquired through the use of eminent domain may be sold or leased for private development, in accordance with the provisions of the conservation plan, the public purpose of the taking is nullified. It is said that in order to constitute a public use the contemplated improvement "must be one which the public to some extent have a right to use and not one which is merely a benefit to the public." *Town of Kingston* v. *Anderson*, 300 Ill. 577; *Gaylord* v. *Sanitary District of Chicago*, 204 Ill. 576.

The sweeping expressions in the cases relied upon, however, have been restricted to the particular factual situations there involved by our decision in People ex rel. Tuohy v. City of Chicago, 394 Ill. 477. Numerous decisions of this court clearly demonstrate that possessory use by the public is not an indispensable prerequisite to the lawful exercise of the power of eminent domain. In discussing a similar contention advanced in an attack upon the validity of the Neighborhood Redevelopment Corporation Law, the court said: "When such areas have been reclaimed and the redevelopment achieved, the public purpose has been fully accomplished. The fact that the act does not thereafter vouchsafe the continued use of the property acquired for public purposes, does not in any way affect the purposes of the act or render the taking of the property a taking for a use or purpose which is not public. The achievement of the rede-

velopment of slum and blight areas, as defined in the act, in our opinion constitutes a public use and a public purpose, regardless of the use which may be made of the property after the redevelopment has been achieved." *Zurn* v. *City of Chicago*, 389 Ill. 114, 129. See also, *Chicago Land Clearance Com.* v. *White*, 2 Ill. 2d 216; *People ex rel. Gutknecht* v. *City of Chicago*, 414 Ill. 600, 611; *Chicago Land Clearance Com.* v. *White*, 411 Ill. 310, 316; *Cremer* v. *Peoria Housing Authority*, 39 Ill. 579, 589, 590, *People ex rel. Tuohy* v. *City of Chicago*, 394 Ill. 477, 487.

It is also contended that the "line of demarcation between a public and private use in the employment of eminent domain to eliminate slum areas * * must be the elimination rather than the prevention of slums." But we are aware of no constitutional principle which paralyzes the power of government to deal with an evil until it has reached its maximum development. Nor is there force in the argument that if the use of eminent domain in the prevention of slums is permitted "every piece of property within the city or State can be condemned to prevent it from becoming a slum." Legitimate use of governmental power is not prohibited because of the possibility that the power may be abused.

In our opinion, the act does not violate section 13 of article II of the constitution.

Plaintiff also challenges the act as an unconstitutional delegation of legislative power to the Community Conservation Board of Chicago and upon the ground that it is so incomplete, indefinite and

uncertain as to violate due process. The attack here centers upon the provisions relating to the designation of conservation areas and to the formulation of plans for particular conservation areas. Defendants suggest, and we agree, that what is here involved is not, technically speaking, a delegation of legislative authority. The action of the board in designating a conservation area carries with it no legal consequences until a conservation plan for the area becomes effective. And a plan approved by the board does not become effective until it is adopted by the city council. The critical action, which affects the rights of property owners, is thus legislative rather than administrative action. (Cf. Berry v. City of Chicago, 320 Ill. 536, 541.) In this respect the status and functions of the board resemble those of a board of local improvements, a zoning commission or a planning commission. (Ill. Rev. Stat. 1953, chap. 24, pars. 84-6, 73-2, 53-1; cf. Gray v. W. A. Black Co., 338 Ill. 488, at 495.) The objection made, however, may fairly be treated in this quo warranto action as a challenge to the legal existence of the board and its authority to act, upon the ground that the statute fails to describe its duties with sufficient particularity. This objection and the due process objection based upon the asserted indefiniteness and lack of certainty of the statute will be discussed together.

The act defines a "Conservation Area" as "an area of not less than 160 acres in which the structures in 50 per cent or more of the area are residential having an average age of thirty-five years

or more. Such an area is not yet a slum or blighted area as defined in the Blighted Areas Redevelopment Act of 1947, but such area by reason of dilapidation, obsolescence, deterioration or illegal use of individual structures, overcrowding of structures and community facilities, conversion of residential units into non-residential use, deleterious land use or layout, decline of physical maintenance, lack of community planning, or any combination of these factors may become such a slum and blighted area." (Ill. Rev. Stat. 1953, chap. 67½, par. 91.10.) Such areas, and their effect upon the public welfare, are thus described in the legislative declaration of policy: "* * * these conservation areas are rapidly deteriorating and declining in desirability as residential communities and may soon become slum and blighted areas if their decline is not checked; that the stable economic and physical development of these areas is endangered by the presence of blighting factors as manifested by progressive and advanced deterioration of structures, by the overuse of housing and other facilities, by a lack of physical maintenance of existing structures, by obsolete and inadequate community facilities and a lack of sound community planning; that as a result and concomitant of the decline of conservation areas, there is a growth of delinquency, crime, and of housing and zoning law violations in such areas, together with an abnormal exodus of families; that the decline of these areas threatens to impair the tax base of such communities and produce the conditions characteristic

of slum and blighted areas which threaten the health, safety, morals, and welfare of the public; that in order to promote and protect the health, safety, morals and welfare of the public it is necessary to provide for the protection of such conservation areas and prevent their deterioration into slum and blighted areas." Ill. Rev. Stat. 1953, chap. 67½, par. 91.9.

It is apparent that the legislative definition attempts to identify and isolate the physical factors which characterize those residential parts of a city which are in an intermediate, transitional stage,—not soundly capable of resisting potential deterioration, but not yet slum areas, either. The task is difficult. The requirements of the definition as to the size of an area and as to the age of the residential structures in it are specific. A floor is provided by the definition of a slum or blighted area which is incorporated by reference from the Blighted Areas Redevelopment Act of 1947, a definition which has been sustained against attack for want of sufficiently specific standards. (People v. City of Chicago, 414 Ill. 600, 614, 615; cf. Zurn v. City of Chicago, 389 Ill. 114, 133; Belovsky v. Redevelopment Authority of Philadelphia, 357 Pa. 329, 54 Atl. 2d 277; Opinion to the Governor, 69 Atl. 2d (R. I.) 531; Foeller v. Housing Authority of Portland, 256 Pac. 2d (Ore.) 752.) Beyond this, the definition enumerates various blighting factors which may combine to constitute an existing threat of transition into a slum. It does so, in our opinion, with sufficient clarity in view of the subject matter in-

volved. (Cf. Department of Public Works and Buildings v. Lanter, 413 Ill. 581, 590.) Specific degrees of deterioration or dilapidation, precise percentages of obsolescence, or mathematical measurements of the extent of overcrowding of residences and of schools and other community facilities which indicate imminent deterioration cannot be stated, for the combinations which will produce the condition at which the legislation is aimed are highly variable.

Plaintiff argues, however, that the provisions which authorize the board to designate a conservation area are insufficient in that the board is permitted to designate at its will as a conservation area, "every residential section of a community over thirty-five years old and in which the city has failed or refused to enforce its zoning laws or building codes." The statute does not reasonably admit of this construction. From section 3 it is clear that mere age of structures in the area is not conclusive but that in addition, there must be present in the area at the time it is designated a conservation area the various blighting factors enumerated in the definition, or a combination of them, to such an extent that unless the decline is checked the area may soon become a slum.

Section 5 provides that a conservation plan "may include but is not limited to (1) land uses, residential and non-residential; (2) improvement, alteration, or vacation of major and minor streets and alleys, provision for restricted service access, and off-street parking; (3) locations and easements for

public utilities; (4) community facilities; (5) landscaping and site engineering; (6) building restrictions; (7) recommended construction including new buildings, rehabilitation and conversions, demolition of designated structures, and elimination of non-conforming uses; (8) population density, ground coverage, and number of dwelling units recommended; (9) recommended standards of maintenance, and requirements of applicable health and safety ordinances; (10) zoning and/or rezoning required; (11) costs and financing arrangements of public portions of the plan; (12) recommended time table of various stages of the program; (13) any and all other steps needed to carry out the plan. Such plan shall conform to the comprehensive plan, if any, of the municipality." Upon the approval of a plan by the board and by the conservation community council for the area in question, the plan is to be submitted to the governing body of the municipality for adoption or rejection. Only upon adoption by the city council would a plan approved by the Chicago Area Conservation Board become effective, and only then would the board be authorized to take any steps toward implementation of the plan. If the action taken by said council in adopting a conservation plan be deemed unreasonable, oppressive, capricious or discriminatory, resort to the courts is available. Murphy v. Chicago, Rock Island and Pacific Railway Co., 247 Ill. 614, 618; City of Chicago v. Brown, 205 Ill. 568, 569.

It is also argued that the present act is so de-

pendent upon other laws for an understanding of its provisions as to be invalid. It is pointed out that in order to determine whether an area can be designated a conservation area under section 3, the Blighted Areas Redevelopment Act of 1947 must be examined; that section 4 permits a member of a conservation board to also act as a member of a Redevelopment Commission created under the Neighborhood Redevelopment Conservation Law; that section 7 requires owners of property within conservation areas to make their property conform to "minimum standards as set forth in the governing ordinances of the municipality," and that one of the reasons specified by section 3 for designating a conservation area is "illegal use of individual structures." The legislative technique here employed is a familiar one, which has uniformly been held free from constitutional objection. (Zurich General Accident and Liability Ins. Co. v. Industrial Com., 331 Ill. 576, 580; Zeman v. Dolan, 279 Ill. 295, 298, 299; People ex rel. Cant v. Crossley, 261 Ill. 78, 85.) Where portions of one statute are adopted by reference in another, the effect is the same as though the statute or the provision adopted had been incorporated bodily into the act. (People v. Crossley, 261 Ill. 78.) It does not follow that because the statute refers to and adopts parts of other statutes it thereby amends them in violation of section 13 of article IV of the constitution. Zeman v. Dolan, 279 Ill. 295.

The statute is not open to the objection that it

improperly delegates legislative authority, nor are its provisions so indefinite as to violate due process.

Plaintiff argues that the present act includes subjects not contained in its title, in violation of section 13 of article IV. This constitutional provision, repeatedly construed, prohibits the inclusion of more than one subject within an act, and requires that the subject be expressed in the title. The title of this act is "An Act in relation to the conservation of urban residential areas and the prevention of slums and to define the rights, powers and duties of municipalities in connection therewith." Plaintiff asserts that the challenged statute includes provisions for (1) condemnation (sec. 6); (2) zoning (sec. 5); (3) making repairs on residential structures by the municipality (sec. 6); (4) the creation and foreclosure of a lien (sec. 7). The argument advanced is that although the general purpose of the act is to conserve residential areas and to prevent them from becoming slums, there is nothing in the title to indicate an intention to deal with zoning regulations, the repair of dilapidated or hazardous buildings, or the exercise of eminent domain. We disagree, and are of the opinion that each of these matters is germane to the prevention of slum and blighted areas.

The contention that the statute violates section 13 of article IV has no legitimate basis.

The next contention requiring consideration is that the act creates arbitrary classifications of real estate in violation of section 2 of article II of our

constitution and the fourteenth amendment to the Federal constitution. An owner of property in a conservation area is required to comply with a conservation plan. His property may be taken by eminent domain or a lien may be imposed upon it to bring it up to minimum standards. Plaintiff insists that no reasonable basis exists for imposing these requirements upon owners of property in conservation areas and not upon those who live beyond such areas. He argues that if a residence in a conservation area tends to create slum conditions by failing to comply with a conservation plan or with minimum standards, a similar residence outside a conservation area would have the same tendency.

An act is not local or special because it operates in but one place, or upon a particular class of persons or things, provided there is a reasonable basis for the legislative classification. (People v. City of Chicago, 249 Ill. 304, 323.) The issue, then, is whether or not there is a legitimate basis for a classification which distinguishes between property within conservation areas and other property. The prevention of slum and blighted areas is a public use and a public purpose. The legislature has found that the conditions which it seeks to remedy exist upon an area basis rather than upon the basis of individual structures. It is not suggested that this finding does not accord with the facts. Legislative action taken to meet the evil in the form in which it most clearly exists cannot be said to be

either clearly unreasonable or palpably arbitrary. (Gill v. Boston Store of Chicago, Inc., 337 Ill. 70, 82.). This conclusion is in accord with the slum clearance cases of Foeller v. Housing Authority of Portland, 198 Ore. 205, 256 Pac. 2d 752, 778, and Herzinger v. Mayor and City Council of Baltimore, (Md.) 98 Atl. 2d 87, 94, where like contentions were decided adversely.

The challenged classification is based upon a reasonable and substantial difference in situations bearing a proper relation to the purposes to be attained by the statute.

Finally, plaintiff contends that section 7, which makes the cost of necessary repairs a lien upon the property, authorizes the taking of property without just compensation in contravention of section 13 of article II of our constitution. The trial judge found that section 7 was separable from and could have no effect upon the validity of the rest of the act, and that a decision upon its constitutionality would be premature. Plaintiff directs attention to an allegation in the complaint that those defendants who are members of the Conservation Board of Chicago, "have undertaken to exercise and intend to continue to exercise the powers" conferred upon them by statute and ordinance, and asserts that defendants' motion to strike admitted this allegation. This allegation did not, we think, require the trial judge to pass upon the validity of section 7. The complaint alleges specific action under the statute and the ordinances relative to the

creation and appointment of a Conservation Board and the appropriation by the city of funds for its use, conformably to the act and the appropriation ordinance. It does not charge that the corporate authorities of any municipality have applied to a circuit court for an order permitting them to make improved private property within a conservation area conform to the minimum standards set forth in the governing ordinances of the municipality and to charge and collect from the owners of and persons interested in the property the reasonable cost and expense of making the repairs and improvements necessary to bring the property up to the minimum standards of the ordinance. In the absence of such allegations, the trial judge did not err in refraining from determining the validity of section 7, which we agree is clearly separable from the other provisions of the act.

The judgment of the circuit court of Cook County is affirmed.

Judgment affirmed.

DAVID ZISOOK, ET AL.

v.

MARYLAND-DREXEL NEIGHBORHOOD REDEVELOPMENT CORPORATION, ET AL.

(Docket No. 33233—Agenda 44—May, 1954)

Supreme Court of Illinois

Opinion decided September 23, 1954

Mr. JUSTICE SCHAEFER delivered the opinion of the court:

Plaintiffs, David and Tybe Zisook, challenged the constitutionality of the 1953 amendments to the Neighborhood Redevelopment Corporation Law by their complaint in the circuit court of Cook County, which sought to enjoin defendants, Maryland-Drexel Neighborhood Redevelopment Corporation, the city of Chicago, and the members of the Neighborhood Redevelopment Commission of the City of Chicago, from taking any action, incurring any obligations, or expending any funds under the authority of those amendments. Defendants' motions to strike the complaint, as amended, and to dismiss the cause were sustained. Plaintiffs elected to stand on their amended complaint, and appeal directly from a decree dismissing the action.

Plaintiffs are residents and taxpayers of the city of Chicago. The Neighborhood Redevelopment Commission was appointed under the Neighborhood

Redevelopment Corporation Law, and the defendant Maryland-Drexel Neighborhood Redevelopment Corporation was formed on October 23, 1953, under that law. (Ill. Rev. Stat. 1953, chap. 32, pars. 550.1 *et seq.*) Maryland-Drexel Neighborhood Redevelopment Corporation is authorized by its charter to redevelop only "conservation areas" and not "slum and blighted areas." It filed with the Neighborhood Redevelopment Commission of the city of Chicago an application for approval of a development plan and for a certificate of convenience and necessity. In its application it stated that it desired to redevelop an area in Chicago bounded by Cottage Grove Avenue on the west, Drexel Avenue on the east, Fifty-fourth Street on the north and Fifty-fifth Street on the south; that this development area was not yet a slum and blighted area but would become such unless redeveloped; that the area was a "Conservation Area," within the meaning of the Neighborhood Redevelopment Corporation Law, as amended, and was in need of redevelopment and conservation. It further stated in its application that it would exercise the right of eminent domain, if and when necessary to the proposed redevelopment plan, upon obtaining written consent to the development plan from the owners of 60 percent or more of the area of land within the development area, and that it did not propose either to purchase, or to secure options to purchase, 60 percent or more in area of the land within the development area.

The Redevelopment Commission ordered that the application be docketed in its conservation docket as Conservation Application No. 1, and that the commission proceed upon the application in accordance with the provisions of the Neighborhood Redevelopment Corporation Law, as amended. On December 11, 1953, the city council of Chicago appropriated $1000 for the expenses of the Redevelopment Commission in processing and proceeding upon applications for redevelopment of "conservation areas."

The constitutionality of the Neighborhood Redevelopment Corporation Law of 1943 was sustained in *Zurn* v. *City of Chicago*, 389 Ill. 114 (1945). The scheme of the statute is set forth in that case and need not be repeated here. In 1953, the General Assembly amended the law in several material respects. Amendments to section 3-4 extended the definition of "Development Plan" to include a plan for the redevelopment of a "Conservation Area," defined in section 3-12 as "an area in which the structures if fifty percent or more of the area are residential having an average age of thirty-five years or more. Such an area is not yet a Slum or Blighted Area as defined in the Blighted Areas Redevelopment Act of 1947, but such area by reason of dilapidation, obsolescence, or deterioration, of illegal use of individual structures, overcrowding of structures and community facilities, conversion of residential units into non-residential use, deleterious land use or layout or any

combination of these factors may become such a Slum and Blighted Area."

Section 42 (1) (c) originally required as a prerequisite to the institution of condemnation proceedings that a development corporation should have acquired, by purchase or options, 60 percent or more in area of the land within its development area. The 1953 amendments permit, as an alternative prerequisite, proof that the owners of 60 percent or more in the area of land within the development area have assented to and agreed to be bound by the terms of the development plan of the redevelopment corporation as to themselves and their property. Sections 19, 30 and 31, providing for appeal to the circuit court and to the Appellate or Supreme Court were repealed in 1949, effective January 1, 1950, and section 30.01, providing for judicial review pursuant to the Administrative Review Act, was added. (Laws of 1949, p. 637.) And in 1953 the title of the act was broadened to include the prevention and conservation of slum and blight areas.

Plaintiffs contend that because of these material changes in the statute, our decision in the *Zurn* case is not controlling. They argue first that the 1953 amendments to the Neighborhood Redevelopment Corporation Law unlawfully delegate legislative powers to municipal Neighborhood Redevelopment Commissions without prescribing standards or rules to govern their determinations, and are so vague and indefinite as to threaten a denial of due

process of law. The core of this contention is in the attack made upon the definition of "Conservation Area" in section 3-12. This definition differs from the definition of a "Conservation Area" in section 3 of the Urban Community Conservation Act in that the conservation area there involved must not be less than 160 acres. That definition also includes two additional factors not mentioned in the present act: "decline of physical maintenance" and "lack of community planning." In *People ex rel. Gutknecht* v. *City of Chicago*, No. 33236, decided this day, we have held that the definition of "Conservation Area" in the Urban Community Conservation Act is not vulnerable to constitutional attack on the ground that it fails to prescribe adequate standards and guides. While the reasons there stated apply with like force to the definition of "Conservation Area" in the statute here involved, a further word is appropriate.

In the act now before us, and in the Urban Community Conservation Act, the General Assembly provided for the creation of agencies which are designed to check the decline of urban areas into slums. The Urban Community Conservation Act contemplates action by governmental agencies. This act authorizes a pattern of action by private agencies, called redevelopment corporations, under governmental supervision. The pattern of action which the amended statute provides for the prevention of slums has been held valid when applied to the elimination of slums. *Zurn* v. *City of Chicago*, 389 Ill. 114.

In neither case has it been questioned that urban areas exist which are deteriorating into slums; nor has it been suggested that the existence of such areas is not a legitimate governmental concern. Both attacks have centered upon the alleged inadequacy of the legislative effort to capture the elusive characteristics of the areas with which it is dealing. Here it is argued, with respect to each of the distinguishing attributes which the statutory definition includes, that it is not stated "how much dilapidation," "how much obsolescence," and so forth, is required. The point would have significance if the techniques of the accountant were applicable. But the combinations of factors which produce the result at which the legislation is aimed cannot be appraised with that degree of precision. The situation here is like that presented in *Department of Public Works and Buildings* v. *Lanter*, 413 Ill. 581, in that the multitude of varying conditions to which the legislation is to apply makes mathematical certainty impossible in the fixing of standards. There an act was sustained which authorized the Department of Public Works to designate highways as freeways, and to limit access to them "when the safety and convenience of highway traffic will be promoted and the public interest subserved thereby." The arguments there advanced are applicable here.

Plaintiffs also argue that under section 24, as amended to cover conservation areas, the Redevelopment Commission is vested with unlimited discretion as to the size of a redevelopment area,

which, in Chicago, shall not be "less than two city blocks nor more than 160 acres, * * * unless the Redevelopment Commission, in the interests of the orderly Redevelopment of a Slum and Blight or Conservation Area, shall * * * authorize a reduction or increase of the Development Area." Reading this provision literally, plaintiffs say that the commission is empowered to reduce a development area to but a single structure or to increase it by any number of blocks it chooses.

The 1953 amendments added the words "or Conservation" to the quoted portion of section 24 and increased the maximum size of a redevelopment area from 80 to 160 acres. Apart from these changes, the section remains the same as when its validity was sustained in *Zurn* v. *City of Chicago*, 389 Ill. 114. It may be observed that in the sentence which follows the quoted provision the General Assembly has explained the meaning of its use of the words "in the interests of the orderly Redevelopment of a Slum and Blight or Conservation Area" as follows: "It shall be in the interest of the orderly Redevelopment of a Slum and Blight or Conservation Area to increase or diminish the Development Area herein limited whenever the Development Areas of two or more Neighborhood Redevelopment Corporations operating or to operate in the same locality shall not encompass an intervening area or less than two city blocks, and the Redevelopment Commission in such instances shall by rule, pursuant to paragraph 2 of Section 25 of this Act, prescribe the conditions under which con-

tiguity, and the extent thereof, shall be mandatory of the two or more Development Areas." It is manifest that Neighborhood Redevelopment Corporations have not been granted unfettered discretion with respect to the size of a redevelopment area but, on the contrary, are governed by precise standards.

Plaintiffs' next contention is directed at the definition of a "Development Plan." Section 3-4 defines at considerable length a development plan, enumerating fourteen requirements which may be included. Of these, twelve are for all practical purposes the same as those permissible in a conservation plan under the Urban Community Conservation Act. (Ill. Rev. Stat. 1953, chap. 67½, par. 91.12.) Attention is directed to the opening portion of section 3-4 stating that a development plan "may include but is not limited to" the fourteen items set forth with particularity. From this, plaintiffs make the bald assertion that there are no limitations whatever upon the kind of development plan for a conservation area which may be accepted and approved by the commission. Section 17, however, describes in great detail the requirements of a development plan. Section 3-4, as amended, defines a development plan far more fully than did the original definition which was summarily held free from the same attack now made. (*Zurn* v. *City of Chicago*, 389 Ill. 114, 133.) The contention is without merit.

Relying upon *Chicagoland Agencies, Inc.* v. *Palmer*, 364 Ill. 13, plaintiffs urge that the failure of

the statute to prescribe the qualifications required of members of the Redevelopment Commission renders the law unconstitutional. Section 4 of the law (Ill. Rev. Stat. 1953, chap. 32, par. 550.4) provides that a redevelopment commission shall consist of from three to five members, who are to be appointed by the mayor, with the advice and consent of the city council. Each member of the commission shall hold office for a term of two years. Vacancies are to be filled by appointment by the mayor, again with the advice and consent of the city council. No person holding stocks or mortgages in any Neighborhood Redevelopment Corporation, or who is in any other manner directly or indirectly pecuniarily interested in such corporation, or in the development undertaken by it, may be appointed as a member of, or be employed by, the Redevelopment Commission to whose supervision and regulation such corporation is subject. If any such member or employee voluntarily becomes so interested, his office or employment becomes vacant, *ipso facto*. Members or employees, who become so interested otherwise than voluntarily, are given ninety days to divest themselves of such interests, and upon their failure so to do their offices or employments become vacant. Members of the commission receive salaries fixed by the city council.

Although section 4 was not changed by the 1953 amendments, the question raised here, not being mentioned in the briefs or the opinion in the *Zurn* case, is open for consideration.

Plaintiffs point to no constitutional provision

which requires that affirmative qualifications be affixed to an office such as this. There is none. An office created by statute may be filled in the manner the legislature prescribes. (*Groves* v. *Board of Education of the City of Chicago*, 367 Ill. 91; *People ex rel. Ahern* v. *Bollam*, 182 Ill. 528; *People ex rel. Akin* v. *Loeffler*, 175 Ill. 585. Reference to *Department of Finance* v. *Cohen*, 369 Ill. 510, 515, makes it clear that the basis of decision in the *Chicagoland Agencies* case was a lack of adequate standards, and not some supposed requirement that the legislature must prescribe the qualifications for appointive office.

Plaintiffs' contention that the new method of judicial review which the amendments provide is grossly inadequate may be disposed of shortly. The argument is advanced here, as it was in the *Zarn* case, that the notice provisions of section 18, relating to the public hearing upon the development plan and the issuance or denial of a certificate of convenience or necessity, are inadequate. This issue was presented directly and decided adversely to plaintiffs in *Zarn* v. *City of Chicago*, 389 Ill. 114, 129-132. The statutory provisions are unchanged, and we adhere to our conclusions in that case.

In addition, plaintiffs stress the fact that review of the decisions of the Redevelopment Corporation, effective July 1, 1950, is to be pursuant to the Administrative Review Act. Plaintiffs characterize such review as "severely restricted, for the Court is limited to consideration of the record of proceedings before the Commission and cannot hear any

new or additional evidence in opposition to the Commission's determinations." A complete answer to this contention is that the 1953 amendments effected no substantial change in the method of judicial review. Sections 19 and 30 of the original law each provided that no new or additional evidence could be introduced upon the review by the circuit court and that, in the event of failure to appeal from the order of the commission, there could be no trial of the merits of such controversy by any court to which application might be made to enforce such order of the commission or in any other judicial proceedings. Ill. Rev. Stat. 1949, chap. 32 pars. 550-19, 550-30.

Indeed, plaintiffs themselves recognize that no substantive change in judicial review was effected, submitting in their reply brief that "the amended review provisions must be considered in the light of the new definitions of crucial terms in the Act." It is clear that plaintiffs' entire argument on this point is predicated upon a theory which we have rejected,—that the new definitions involve an unlawful delegation of legislative power without definite standards. The method of judicial review prescribed by the statute is sufficient. See *Zurn* v. *City of Chicago*, 389 Ill. 114.

As originally enacted, section 42 of the Neighborhood Redevelopment Corporation Law provided that, before instituting condemnation proceedings, a Redevelopment Corporation was required to submit proof to the Commission that it had acquired by purchase, or had secured options to purchase, 60

percent or more of the land within the development area. This section was amended in 1953 to provide as an alternative that the corporation may submit proof that the owners of 60 percent or more in area of the land within the development area have "assented to and consented to be bound by the terms and provisions of the Development Plan of the Neighborhood Redevelopment Corporation as to themselves and their property." Plaintiffs contend that section 42, as amended, improperly delegates legislative power to property owners.

What the General Assembly has done is to authorize redevelopment corporations to exercise the right of eminent domain upon certain prescribed conditions. (*Zurn* v. *City of Chicago*, 389 Ill. 114). The conditions both as originally stated and as amended, appear designed to insure the likelihood that a plan can be successfully implemented before the power of eminent domain is permitted to be exercised. In so providing the legislature has not delegated its power to make the law. The legislature has made the law, has provided for the creation and regulation of Redevelopment Corporations, has provided what powers such corporations may and may not exercise, and has provided that they may exercise the power of eminent domain upon certain prescribed conditions. It is settled that the legislature may lawfully enact a law, the operation of which depends upon a contingent event. This court has stated that "* * * nothing is better settled than that the operation and even remedial character of a perfect and complete law may, by

virtue of limitations contained in the law itself, based upon contingent extrinsic matters, be enlarged, diminished, or wholly defeated. Such laws, though adopted absolutely and perfect in all their parts, yet by their own limitations they are applicable to a hypothetical condition of things only, and which may or may not ever happen. That it is perfectly competent for the legislature to pass such laws is shown by long legislative experience, and a decided weight of judicial authority." (*Home Ins. Co.* v. *Swigert*, 104 Ill. 653, 665.) To the same effect are *People* v. *McBride*, 234 Ill. 146, 177; *People ex rel. Deneen* v. *Simon*, 176 Ill. 165; *People ex rel. Grinnell* v. *Hoffman*, 116 Ill. 587. This distinction was noted in *People ex rel. Chicago Dryer Co.* v. *City of Chicago*, 413 Ill. 315, 321, upon which plaintiffs rely. Section 42 is not invalid for the reason urged.

The contention that the 1953 amendments authorize the taking of private property for a private use in violation of constitutional limitations is disposed of by our opinion in *People* v. *City of Chicago*, No. 33236, decided this day, which holds that the Urban Community Conservation Act does not authorize the taking of private property for a private purpose. Our conclusion there is decisive of the identical contention made here, which is supported by essentially the same arguments.

When the 1953 amendments were enacted, the title of the Neighborhood Redevelopment Corporation Law was amended, by the addition of the words italicized, to read as follows: "An Act to provide

for the *prevention and* eradication of slum and blight areas and the *conservation*, rehabilitation and rebuilding thereof through the medium of neighborhood redevelopment corporations with powers of eminent domain." By their final contention, plaintiffs assert that the amended title is insufficient to embrace the 1953 amendments because it does not suggest provisions relating to the conservation, rehabilitation and rebuilding of areas other than slum and blight areas. The nub of the contention is that the word "thereof" refers to slum and blight areas only, and there is therefore nothing in the title referring to the conservation, rehabilitation and rebuilding of conservation areas. In our opinion, the addition of the words "prevention" and "conservation" to the title enlarged it sufficiently to include the slum prevention and conservation provisions incorporated in the body of the statute.

What is required is that the title of an act fairly indicate the general subject and reasonably cover all the provisions of the act, so as not to mislead either the legislature or the public. (*People* v. *Roche*, 389 Ill. 361; *People* v. *Tallmadge*, 328 Ill. 210; *People* v. *Stacker*, 322 Ill. 232. See: *People* v. *City of Chicago*, No. 33236, decided this day.) As amended, the title of the act fairly expresses as one of its objectives the prevention of slums. The provisions of the statute with respect to conservation areas are clearly germane to that objective. The constitution does not require that the title of an

act be expressed in the most precise phraseology. The amended title of the challenged statute would, we think, mislead no one.

The decree of the circuit court of Cook County is affirmed.

Decree affirmed.